PP

v.

YII SOON HO

HIGH COURT SABAH & SARAWAK, MIRI
ZULKIFLI BAKAR J
[CRIMINAL TRIAL NO: 45-02-2005 (MR)]
28 DECEMBER 2012

CRIMINAL LAW: *Penal Code - Section 302 - Murder - Circumstantial evidence - Whether irresistible conclusion drawn that accused murdered deceased - Whether court took into consideration nature and number of injuries sustained by deceased - Major depressive disorder and intoxication - Defence of - Whether established - Penal Code, s. 83(1) - Whether accused had intention to cause death*

EVIDENCE: *Circumstantial evidence - Murder - Whether cumulative effect of evidence irresistibly pointed to accused having murdered deceased - Whether nature of injuries and weapon used showed intention of accused to kill deceased - Whether accused aware of his actions at the material time - Major depressive disorder and intoxication - Defence of - Whether established*

The accused was charged in the High Court for the murder of his girlfriend's 53-year-old mother ('the deceased') who was against his relationship with her daughter. The deceased was found stabbed to death in her home. There were 15 knife injuries on her body, 12 of which were stab wounds and the other three were cut wounds. Two of the stab wounds were fatal and inflicted with considerable force penetrating her lungs causing internal bleeding. The accused's girlfriend, PW16, testified in court that the accused had been angry with the deceased for interfering with their relationship. He had on many occasions threatened to harm the deceased. PW16 told the court that despite the accused's refusal to accept her decision, she ended their relationship one month before the murder. Although she had requested him to return the key to the main sliding door of the house where she lived with the deceased, the accused had refused to do so. The prosecution's evidence showed that after he had killed the deceased, the accused waited for PW16 to return home. He was armed with a knife and warned PW16 to do as she was told. He forced her to pack her clothes and then took her to another

house where he chained her to a bed and gagged and bound her with tape. After a two-day stay in that house, the accused took PW16 to another house on a hill. While they were there, two policemen acting on information received came upon the couple. The accused, on seeing the policemen, attempted to flee but he was arrested. A knife recovered from the accused had blood stains that matched the deceased's blood. In his defence, the accused contended that he should be absolved of murder because he suffered from major depressive disorder ('MDD') and that he was also intoxicated at the material time such as to make him unaware of what he was doing.

Held (convicting the accused for murder and sentencing him to death):

(1) Based on the strength of the series of circumstantial evidence adduced and upon considering the cumulative effect of each strand of circumstantial evidence so produced, the court was led to the irresistible conclusion that it was the accused who murdered the deceased. (para 86)

(2) Considering the nature and number of injuries sustained by the deceased and the type of weapon that was used, the prosecution had *prima facie* established the irresistible inference that the accused intended to cause the deceased's death. (para 94)

(3) It was crystal clear from the evidence that the consciousness of a person like the accused claiming to be a MDD sufferer was not impaired and remained intact. He was aware of what he was doing and knew the nature of his acts and could tell right from wrong because his power of reasoning was not impaired. The accused failed to establish that he was undergoing a MDD episode at the material time on a balance of probabilities. (paras 119 & 146)

(4) Even if the accused claimed that he was intoxicated at the material time, it was not a defence under s. 83(1) of the Penal Code. Assuming he was intoxicated, it was incumbent upon the court to look at the accused's conduct prior to, at the time of, and after the offence as to whether he was capable of forming the specific intent necessary to constitute the crime. From the nature of the injuries sustained by the deceased and the type of weapon used to inflict those injuries, it was clear that the accused had the necessary intention to commit the crime. (paras 148 & 151).

(5) The accused had failed to raise a reasonable doubt on the prosecution's case on a balance of probabilities and accordingly, the prosecution had established the offence beyond reasonable doubt. (para 154)

Case(s) referred to:

Abdullah Jacomah v. PP [2002] 8 CLJ 1 HC ***(refd)***
Ayoromi Helen v. PP [2005] 1 CLJ 1 CA ***(refd)***
Balachandran v. PP [2005] 1 CLJ 85 FC ***(refd)***
Chan Chwen Kong v. PP [1962] 1 LNS 22 CA ***(refd)***
Chang Kim Siong v. PP [1967] 1 LNS 18 FC ***(refd)***
Chang Lee Swee v. PP [1984] 1 LNS 134 HC ***(refd)***
Dato' Mokhtar Hashim & Anor v. PP [1983] 2 CLJ 10; [1983] CLJ (Rep) 101 FC ***(refd)***
Jayaraman & Ors v. PP [1981] 1 LNS 129 ***(refd)***
Kamaruddin bin Omar v. PP [1938] 1 LNS 32 HC ***(refd)***
Karam Singh v. PP [1967] 1 LNS 65 FC ***(refd)***
Karthiyayani & Anor v. Lee Leong Sin & Anor [1974] 1 LNS 61 FC ***(refd)***
Krishna Jayaram v. PP [1989] 1 LNS 73 HC ***(refd)***
Mohd Yusof bin Said v. PP [1996] 2 CLJ 13 FC ***(refd)***
Muhammed Hassan v. PP [1998] 2 CLJ 170 FC ***(refd)***
Perwira Habib Bank Malaysia Bhd v. Megat Najmuddin Megat Khas & Ors [1999] 4 CLJ 517 HC ***(refd)***
PP v. Ang Soon Huat [1990] 1 LNS 103 HC ***(refd)***
PP v. Chin Yoke [1939] 1 LNS 66 HC ***(refd)***
PP v. Dato' Seri Anwar Ibrahim (No. 3) [1999] 2 CLJ 215 HC ***(refd)***
PP v. Hanif Basree Abdul Rahim [2004] 3 CLJ 700 HC ***(refd)***
PP v. Kenneth Fook Mun Lee & Another Appeal [2006] 1 CLJ 499 CA ***(refd)***
PP v. Kenneth Fook Mun Lee @ Omar Iskandar Lee Abdullah (No. 2) [2003] 1 LNS 721 HC ***(refd)***
PP v. Letchumanan [2000] 4 CLJ 685 HC ***(refd)***
PP v. Lin Lian Chen [1990] 2 CLJ 1020; [1990] 2 CLJ (Rep) 746 HC ***(refd)***
PP v. Magendran Mohan [2005] 3 CLJ 592 HC ***(refd)***
PP v. Mansor Md Rashid & Anor [1997] 1 CLJ 233 FC ***(refd)***
PP v. Reza Mohd Shah Ahmad Shah [2002] 1 LNS 157 HC ***(refd)***
PP v. Saimin & Ors [1971] 1 LNS 115 HC ***(refd)***
PP v. Sainal Abidin Mading [1998] 3 CLJ 41 HC ***(refd)***
PP v. Sam Kim Kai [1960] 1 LNS 99 HC ***(refd)***
PP v. Sukumaran Sudram [1999] 4 CLJ 242 HC ***(refd)***
Sainal Abidin Mading v. PP [1994] 4 CLJ 215 CA ***(refd)***
Sunny Ang v. PP [1995] 1 LNS 171 FC ***(refd)***
Tan Buck Tee v. PP [1961] 1 LNS 130 HC ***(refd)***
Tham Kai Yau & Ors v. PP [1976] 1 LNS 159 HC ***(refd)***

Legislation referred to:
Criminal Procedure Code, ss. 180, 182A
Evidence Act 1950, ss. 8, 9, 45, 157
Penal Code, ss. 83(1), 302

Other source(s) referred to:
The Blackstone's *Criminal Practice 1991*, pp 1674, 1675

Reported by Ashok Kumar

JUDGMENT

Zulkifli Bakar J:

Introduction

The Charge

[1] The charge against the accused person reads as follows:

> That you on 2nd February 2005 at between 9.00pm and 12 midnight at Lot 488, Jalan Lentik 2, Pujut 9, Miri, in the district of Miri in the State of Sarawak did commit murder by causing the death of one Lee Gek Tiong @ Diana and that you have thereby committed an offence punishable under section 302 of the Penal Code.

[2] The prosecution called 29 witnesses to give evidence for the case for the prosecution with 19 witnesses offered to the defence at the close of the prosecution's case.

Duty Of Court At The End Of Case For The Prosecution

[3] The duty of the court at the end of the prosecution's case is clearly spelt out in s. 180 of the Criminal Procedure Code, which reads as follows:

> [1] When the case for the prosecution is concluded, the Court shall consider whether the prosecution has made out a *prima facie* case against the accused.
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> [2] If the Court finds that the prosecution has not made out a *prima facie* case against the accused, the court shall record and order of acquittal.
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> [3] If the Court finds that a *prima facie* case has been made out against the accused on the offence charged the Court shall call upon the accused to enter on his defence.

[4] A "*prima facie*" is one which is established by sufficient evidence, and can be overthrown only by rebutting evidence adduced by the other side. (*PP v. Chin Yoke* [1939] 1 LNS 66; [1940] MLJ 47).

[5] In such circumstances, a "*prima facie*" case is said to have been established by the prosecution when the evidence in their favour is sufficiently strong for the accused to be called to answer it.

[6] In other words, a "*prima facie*" is made out where there is sufficient credible *prima facie* evidence establishing each essential ingredient of the offence for a supposition of guilt, if not answered by the accused – (*PP v. Sukumaran Sudram* [1999] 4 CLJ 242; [1999] 4 MLJ 462).

[7] This includes a maximum evaluation of the credibility of the witnesses which the court has to undertake at the close of the case for the prosecution (*PP v. Dato' Seri Anwar Ibrahim (No. 3)* [1999] 2 CLJ 215; [1999] 2 MLJ 1).

[8] If the accused elects to remain silent he must be convicted since the court, in ruling that a *prima facie* case has been made out, must be satisfied that the evidence adduced can be overthrown only by evidence in rebuttal. It follows that if it is not rebutted it must prevail (*Balachandran v. PP* [2005] 1 CLJ 85; [2005] 1 AMR 321).

The Offence And The Evidence Of The Prosecution

[9] Next will be the ingredients of the offence under s. 302 of the Penal Code and the relevant facts and evidence that support the ingredients and later the pertinent facts that establish each of the ingredients of s. 302 of the Penal Code (PC).

The Ingredients Of Section 302 Of PC

[10] Since the accused was charged for an offence of murder, the ingredients of the offence are:

(i) That Lee Gek Tiong @ Diana is dead;

(ii) That Lee Gek Tiong @ Diana died as a result of injuries sustained by her;

(iii) That the injuries of Lee Gek Tiong @ Diana (deceased) were caused by or the result of the acts of the accused;

A (iv) That in inflicting the injuries upon Lee Gek Tiong @ Diana, (deceased) the accused either:

(a) caused them with the intention of causing death; or

B (b) caused them with the intention of causing such bodily injuries as the accused knew to be likely to cause the death; or

(c) caused them with the intention of causing bodily injuries and such bodily injuries intended and inflicted were C sufficient in the ordinary course of nature to cause death.

(*PP v. Sainal Abidin Mading* [1998] 3 CLJ 41 (High Court); *Sainal Abidin Mading v. PP* [1994] 4 CLJ 215; [1999] 4 MLJ 497 (Court of Appeal))

D *First Ingredient*

[11] At about 4.26pm on 3 February 2005, a dead body of the deceased arrived at the General Hospital, Miri. It was later identified by her husband, Julian Jolly (PW20) during the post- E mortem on 5 February 2005 at about 9am at the Mortuary, General Hospital, Miri. PW20, and the deceased's children, Christina Audrey Jolly (PW16) and Ronald Justin George Jolly (PW21) have confirmed the death of Lee Gek Tiong @ Diana, (the deceased person.)

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[12] The defence in submissions disputed that the identity of Lee Gek Tiong @ Diana as the dead person in this case. This court do not find any merit on this contention since there are ample evidence to that effect. Therefore the first ingredient is G *prima facie* established.
(*PP v. Mat Razali bin Deraman* [1992] 2 CLJ 875)

Second Ingredient

[13] As regards the second ingredient, there is ample evidence H from Dr Jamil Dolkadir (PW12), who conducted a post-mortem on the body upon the request by the police on 5 February 2005 at about 9am. PW12 said that he recorded his findings and later on prepared a post-mortem report exh. P35. That post-mortem report was tendered and produced in this trial without any objection I from the defence. The defence contention that there was a police report dated 5 February 2005 which formed the basis of the post-mortem report (exh. P35) is misleading. From the totality of the

evidence this court found there is no such report and the date "13 February 2005" is a typo error which should have been "3 February 2005." It is absurd to suggest that the deceased was still alive when the post-mortem was conducted on her body on 5 February 2005 by PW12. This will be discussed in the later part of this judgement.

[14] For ease of reference, it is appropriate here to reproduce the relevant parts of exh. P35, namely:

...

Autopsy Report

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History

On 13/02/2005 at about 2.30 p.m. the victim son found her died at her house at Pujut 9, Miri. She was in prone position with blood seen at body and floor, with wounds at the chest. The body was then brought by police to hospital few hours later.

Autopsy Finding

External Examination

The body was consistent with 53 years old Chinese female of medium built clothed in black T-shirt, bra, long pant and underwear. Dried blood seen on the face, neck and chest. All the clothings were given to police. Both conjunctiva were pale.

...

Cause Of Death

Stab wounds at the chest penetrating the right lungs.

...

[15] According to PW12, he found the following injuries on the dead person, Lee Gek Tiong @ Diana, namely:

[1] Stab wound medial to right nipple measuring 2.9cm long, 0.8cm. (penetrating the right lung).

[2] Stab wound below to wound number one above measuring 2.5cm long, 0.8cm wide (penetrating right lung).

[3] Stab wound below and medial to left nipple measuring 2.0cm long, 0.8cm wide and 2cm long (did not penetrate heart or lung).

A [4] Stab wound above and medial to left nipple measuring 1.8cm long, 0.7cm wide and 1.8cm deep (did not penetrate lung or heart).

[5] Stab would lateral and upper to left nipple measuring 1.4cm long, 0.5cm wide and 1.5cm deep (did not penetrate lung or
B heart).

[6] Stab wound at left epigastric area measuring 2.5cm long, 0.8cm wide and 3.8cm deep (did not penetrate liver or intestine).

C [7] Stab wound at left upper arm anteriorly measuring 2.1cm long, 0.9cm wide and 2.3cm deep.

[8] Cut wound at left upper arm posteriorly measuring 10.2cm long, 1.5cm wide and 1.5cm deep.

D [9] Cut wound at the left arm pit measuring 4.1cm long, 1cm wide and 1cm deep.

[10] Stab wound at lower left chest, laterally measuring 2.2cm long, 0.8cm wide and 2.3cm deep (did not penetrate lung intestine).
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[11] Through and through stab wound at medial side of left wrist measuring 2.2cm long (on each side) and 0.3 cm wide.

[12] Through and through stab wound at lateral side of the left wrist measuring 2.8cm long (on each side) and 0.3cm wide.
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[13] Stab wound at posterior lower neck measuring 2.1cm long, 0.8cm wide and 2.3cm deep.

[14] Stab wound at right neck, posteriorly measuring 2.2cm long, 0.8cm wide and 2.2cm deep (did not penetrate carotid
G vessels).

[15] Cut wound above wound number 14 above, measuring 3.3cm long, 0.8cm wide and 1cm deep.

No other wound seen.
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[16] It was the evidence of PW12 that the deceased has sustained fifteen (15) wounds - three (3) cut wounds and twelve (12) stab wounds. According to PW12, the wounds No. 1 and No. 2 were considered fatal wounds as they penetrated the right
I lung causing the right haemothorax, ie, bleeding in the right chest. These wounds, PW12 said, were inflicted with substantial force and could have been caused by a sharp object like the knife

P25(A). When the deceased sustained such fatal wounds, PW12 said, she could have been in upright or lying position facing her assailant.

[17] As regards the injuries Nos. 3, 4, 5, 6, 7, 10, 13 and 14, PW12 said they were inflicted with moderate force caused by a sharp object like the knife P25(A). When she sustained the injuries Nos. 3, 4, 5, 6, 7 and 10, PW12 opined that she could be standing or lying down facing her assailant. The injuries Nos. 13 and 14 on the deceased, PW12 said, were inflicted from behind when she was in upright position or in prone position. As for injury No. 15 which was on the right neck posteriorly above the injury No. 14, PW12 said it was inflicted on the deceased with a moderate force using a sharp object like the knife P25(A) when she was probably in upright or prone position.

[18] The injuries Nos. 11 and 12, the left wrist of the deceased, according to PW12, were caused by a sharp object like the knife exh. P25(A) and applied with strong force. PW12 explained that these injuries were through and through penetrating the wrist. PW12 said as the length of the injuries were of equal length on both the interim and the posterior, he could not say for sure which one was the entry wound or exit wound. PW12 said the deceased when inflicted with such injuries would probably in a supine or prone (lying face down) position. In addition, PW12 said the injuries Nos. 11 and 12 were probably defensive injuries.

[19] PW12 when shown exhs. P19(A) and P26(A), two glass bottles containing blood sample has confirmed that the blood samples were drawn from the body of the deceased and he gave them to one ASP Kaderi (PW25). This witness also shown the clothings of the deceased – an underwear exh. P36, a long pants exh. P36(A), a brassier exh. P36(B) and a t-shirt exh. P36(C). He confirmed that the clothings were taken from the deceased were given to PW25. Besides, PW12 said he also gave PW25 the samples of nails and hairs of the deceased.

[20] PW12 is a consultant pathologist attached to the Pathology Department at General Hospital Kuching, Sarawak since 1993 till to date, and graduated with MBBS from University of Malaya (UM) in 1982. He said he obtained his Masters of Pathology in 1987 from UM.

[21] PW12 said as a pathologist he has done few thousands of post-mortems. PW12 said he has been appearing in courts to give evidence in pathology at no less than hundred times.

[22] PW12 said to his knowledge his evidence on pathology has been accepted by the courts.

[23] Therefore PW12 is duly qualified to give such evidence and there was no challenge from the defence as to his qualification or expertise, this court has no reason to reject his testimony as a pathologist, hence an expert under s. 45 of the Evidence Act.

[24] In the circumstances, the second ingredient is *prima facie* established.
(*PP v. Sainal Abidin Mading* [1998] 3 CLJ 41 (High Court); *Sainal Abidin Mading v. PP* [1994] 4 CLJ 215; [1999] 4 MLJ 497 (Court of Appeal))

Third Ingredient

[25] For this ingredient, the evidence adduced by the prosecution is not direct evidence but relies on circumstantial evidence.

[26] Before embarking on the evidence adduced in support of this ingredient, perhaps it is pertinent for this court to remind itself of the principles relating to circumstantial evidence.

[27] In the case of *Sunny Ang v. PP* [1995] 1 LNS 171; [1996] 2 MLJ 195, Their Lordships in the Federal Court had this to say, *inter alia*:

> … The second question to which I must draw your attention is that in this case, depending as it does on circumstantial evidence, is whether the cumulative effect of all the evidence leads you to the irresistible conclusion that it was the accused who committed this crime. Or is there some reasonably possible explanation such, for example - was it accident?
>
> Now, as I told you earlier on, one of the points about circumstantial evidence is its cumulative effect. Any one of these points taken alone might, you may think, be capable of explanation. The question for you is: where does the totally of them, the total effect of them, all lead you to? Adding them together, considering them, not merely each one itself, but altogether, does it or it not lead you to the irresistible inference and conclusion that the accused committed this crime? Or is there some other reasonably possible explanation of those facts?

> The prosecution case is that the effect of all this evidence drives you inevitably and inexorably to the one conclusion and one conclusion only: that it was the accused who intentionally cause death of this young girl …

[28] In the case of *Sunny Ang*, the deceased body was never found. The court had decided that based on the cumulative effect of the circumstantial evidence, the accused was found guilty of murder.

[29] In *Jayaraman & Ors v. PP* [1982] 1 LNS 126; [1982] 2 MLJ 306 it was held that:

> … Whether it is a correct law that in dealing with a case which relies on circumstantial evidence it does not make any different if a court finds that in considering all the evidence it is satisfied beyond reasonable doubt that the accused is guilty of the offence or if the court says that the evidence points only to the irresistible conclusion that the accused is guilty …

[30] In the case of *PP v. Magendran Mohan* [2005] 3 CLJ 592, Balia J had said:

> … It has always been emphasised that wherever circumstantial evidence is relied on by the prosecution in building up its case against an accused person, any such piece of evidence must tend only in one direction, that is to say, suggest or lend support to an inference of guilt. (see *Muniandy and Anor v. PP* [1973] 1 MLJ 179). In *Khamis v. PP* [1974] 1 LNS 59; [1975] 1 MLJ 46, the appellant was convicted on a charge of murder and was sentenced to death. The evidence against him were entirely circumstantial and on an appeal to the Federal Court, his conviction was affirmed. The learned trial judge had in his summing up to the jury stated that "for a court to rely on circumstantial evidence, the evidence when considered must point only to the guilt of the accused it must not be capable of any other interpretation of any other meaning".

[31] The Blackstone's *Criminal Practice 1991* at pp. 1674-1675, the authors stated the following on circumstantial evidence:

> Circumstantial evidence is to be contrasted with direct evidence. Direct evidence is evidence of facts in issue. In the case of testimonial evidence, it is evidence about facts in issue of which the witness claims to have personal knowledge, for example, I saw the accused strike the victim. Circumstantial evidence is evidence of relevant fact, ie, facts from which the existence or non existence of facts in issue may be inferred. For example, the

A tribunal of fact is likely to attach more weight to a variety of individual items of circumstantial evidence, all of which lead to the same conclusion, that to direct evidence to the contrary coming from witnesses lacking in credibility.

B **[32]** His Lordship Thomson CJ in *Chan Chwen Kong v. PP* [1962] 1 LNS 22; [1962] MLJ 307 said:

> … where the evidence is wholly circumstantial what has to be considered is not only the strength of each individual strand of evidence but also the combined strength of these strands when
C twisted together to make a rope. The real question is: is that rope strong enough to hang the prisoner?

[33] In *Karam Singh v. PP* [1967] 1 LNS 65; [1967] 2 MLJ 25, HT Ong FJ (as he then was) said:

D … In a case where the prosecution relies on circumstantial evidence, such evidence must be inconsistent with any other hypothesis than that of the guilt of the accused … (See: *Muniandy & Anor v. PP* [1973] 1 MLJ 179, *Khamis v. PP* [1974] 1 LNS 59; [1975] 1 MLJ 46, *Lim Foo Yong v. PP* [1976] 2 MLJ 259, *Dato' Mokhtar bin Hashim & Anor v. PP* [1983] 2 CLJ 10; [1983] CLJ (Rep) 101; [1983] 2 MLJ 232).
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[34] In *Jayaraman & Ors v. PP* [1981] 1 LNS 129; [1982] 2 MLJ 273 Syed Othman FJ had said this when dealing with circumstantial evidence at p. 280 (MLJ):

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> ... I am well aware that the "irresistible" formula has been used by the courts here in dealing with circumstantial evidence. But I would like to refer here to *Mc Greevy v. Direstor of Public Prosecution* where it was argued at page 279, before the House of Lords that "in criminal trial in which the prosecution case, or any
G essential ingredient thereof, depends, as to the commission of the act, entirely on circumstantial evidence, it is the duty of the trial judge, in addition to giving the usual direction that the prosecution must prove the case beyond reasonable doubt, to explain to the jury in terms appropriate to the case being tried that this direction
H means that they must not convict on circumstantial evidence unless they are satisfied that the facts proved are (a) consistent with the guilt of the accused and (b) exclude every reasonable explanation other than the guilt of the accused …

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[35] The Federal Court, in *Chang Kim Siong v. PP* [1967] 1 LNS 18; [1968] 1 MLJ 36 stated: A

> The onus on the prosecution where the evidence is of a circumstantial nature is a very heavy one and that evidence must point irresistibly to the conclusion of the guilt of the accused. (emphasis court). If there are gaps in it, then it is not sufficient. B
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> Further deliberation on the issue of dealing with circumstantial evidence, the courts of this country has always been guided by the three tests formulated by the Indian Supreme Court in *Chandmal & Anor v. State of Rajasthan* (AIR) (1970) SC 917 where Sarkaria J said: C
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> > It is well settled that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests. *Firstly, the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established. Secondly, those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused. Thirdly*, the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and no one else. That is to say *the circumstances should be incapable of explanation on any reasonable hypothesis save that of the accused's guilt.* (emphasis added) (See also: *Ghambir v. State of Maharashtra* AIR [1982] SC 1157) D E
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> > As often been said, the onus on the prosecution where the evidence is purely circumstantial in nature is a very heavy one and where the evidence consists of series of circumstances it is the combined strength of these circumstances considered together that will form the rope to hang the accused person ... F
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> ... In cases where a chain of circumstantial evidence has been established by the prosecution, this court in dealing with evidence of this nature always adopts the view stated by of Faizal Ali J in delivering the judgment of the Supreme Court in *Ram Avtar v. The State (Delhi Administration)* AIR [1985] SC 1692, which states: G
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> > At the very outset we might mention that circumstantial evidence must be complete and conclusive before the accused can be convicted thereon. This, however, does not mean that there is any particular or special method of proof of circumstantial evidence. We must, however, guard against the danger of not considering circumstantial evidence in its proper perspective, eg, where there is a chain of circumstances linked up with one another, it is not possible for the court to truncate and break the chain of circumstances. In other words where a series of H I

A circumstances are dependent on one another they should be read as one integrated whole and not considered separately, otherwise the very concept of proof of circumstantial evidence would be defeated. The learned sessions judge seems to have fallen into this very error. In the instant case, instead of taking all the circumstances together, which are undoubtedly circumstantial and closely linked up with one another, the learned sessions judge has completely misdirected himself by separately dealing with each circumstance thereby making a wrong approach while appreciating the circumstantial evidence produced in the case.

... It is not possible for us to consider the various chains of circumstances, mentioned above, in isolation by divorcing them from the other circumstances which are closely interlinked with them ...

Before concluding we might observe that where circumstantial evidence consists of a chain of continuous circumstances linked up with one another, the court has to take the cumulative effect of the entire evidence led by the prosecution before acquitting or convicting an accused ...

It will be seen that from the list of authorities referred, it has consistently been held that where the evidence against the accused person is wholly circumstantial the evidence proved must irresistibly point to one and only one conclusion, that is the guilt of the accused. On the strength of the series of circumstantial evidence adduced before me and upon considering the cumulative effect of each strand of circumstantial evidence so produced, I hold that the prosecution has established a *prima facie* case of murder against the accused and called upon him to enter his defence.

A prime facie case arises when the evidence in favour of a party is sufficiently strong for the opposing party to be called on to answer. The evidence adduced must be such that it can be overthrown only by rebutting evidence by the other side. Taken in its totality, the force of the evidence must be such that if unrebutted, it is sufficient to induce the court to balance in the existence of the facts stated in the charge or to consider its existence so probable that a prudent man ought to act upon the supposition that these facts existed or did happen. (emphasis added) (*PP v. Dato' Seri Anwar b. Ibrahim (No. 3)* [1999] 2 CLJ 215, *PP v. Saare Hama & Anor* [2001] 4 CLJ 475, *Balachandran v. PP* [2005] 1 CLJ 85; [2005] AMR 321.

[36] The *locus classicus* is *Dato' Mokhtar Hashim & Anor v. PP* [1983] 2 CLJ 10; [1983] CLJ (Rep) 101, where it was held that, *inter alia*:

> ... Where circumstantial evidence is the basis of the prosecution case the evidence proved must irresistibly point to one and only one conclusion, the guilt of the accused ... but in a case tried without a jury the failure by the Court to expressly state this is not fatal and *it would suffice if it merely says that it is satisfied as to the guilt of the accused beyond reasonable doubt* (emphasis added) [*Jayaraman & Ors v. PP* [1979] 1 LNS 36 (at p. 310)] ...

[37] Suffice to say that it is trite law that in dealing with circumstantial evidence, this court must be satisfied that the evidence when considered together must point to the guilt of the accused and it must not be capable of any other interpretation or any other meaning.

[38] In the present case, in relying on circumstantial evidence whether the facts proved are (a) consistent with the guilt of the accused and (b) exclude every reasonable explanation other than the guilt of the accused?

[39] The testimonies of the relevant witnesses on this ingredient could be surmised as follows:

(a) Christina Audrey Jolly (PW16)

> Christina Audrey Jolly (PW16) said that on 2 February 2005 at about 8pm, she and her mother (the deceased) left their house in their own cars. PW16 said she went out with her friends to have steamboat at Airy Cafe Miri at Boulevard while the deceased left for Bible study at Saint Columbus Church, Miri. PW16 said when they left the house, the sliding door and the iron grill to the main door of the house were locked. PW16 said both of them had the keys to the house. As they left the house, PW16 said they also turned off the air conditioners in the house, shut close the windows and only left the lights in the living room, corridors and patios on. After she had her night jaunt with her friends in town, PW16 said she went back home. PW16 said she arrived at the house at about 3am the next morning, ie, on 3 February 2005. PW16 said the car porch was dark and dimly lit by the street lights. PW16 said she was curious as the deceased had habitually left

A the lights in the porch and corridor on. PW16 said the deceased's car was in the car porch. PW16 said she parked her car in the car porch beside the deceased's car. PW16 said the car porch was dark. PW16 said the windows were shut and the air conditioner in the living room was turned on. B PW16 said she was walking to the main entrance, she saw the iron grill unlock while the sliding door was lock. PW16 said she pulled the iron grill, unlocked the sliding door and went inside. The living room was dark. Due to the lights coming from the street lights from outside the house, PW16 said only C the furniture in the living room and things in the dining area were still visible when she entered the house. PW16 said she locked the iron grill. PW16 said as she was locking the sliding door, she heard someone charging towards her from the dining room area of the house. PW16 said she looked towards the D dining area and saw the accused waving a knife exh. P25[A] in his left hand in the air in a stabbing manner and charged at her. PW16 said on seeing this she was scared and screamed out and fell down. PW16 said the accused was on top of her and pinned her down. PW16 said she was told by the E accused to shut up and listen to him as the deceased was in his custody. PW16 said the accused who looked angry and determined told her that if she did not listen to him, the deceased would be killed by him. PW16 said she kept quiet and stopped screaming, and was pulled by the accused F towards the couch facing the television set. PW16 said she asked the accused where the deceased was, and she was told that the deceased was brought to Bekenu and taken care of by the accused's friends. PW16 said the accused warned her that the deceased would be hurt if she failed to comply with G him. PW16 said however she did not believe what the accused had told her as the deceased's handbag and car keys were still on the bar stool at the dining area which was about a meter away from the couch where she was seated. PW16 said the accused retorted and told her to shout out the H deceased's name if she would answer her. PW16 did so and there was no reply from the deceased. PW16 said the accused then told her to go to her room and packed up her things as he would take her away fast or else his friends would kill the deceased if they did not hear from him. PW16 said as she was I walking towards her room along the corridor which was dark,

the accused pulled her along to walk faster. PW16 said the light in the corridor was turned off. PW16 said the accused turned on the lights in the room. PW16 said she saw two bags (exhs. P40 and P62) on the floor. It is in evidence before this court that the bag P40 and its contents exhs. P41 till 61) belongs to PW16, and the bag P62 and its contents (exhs. P63 till P71) belongs to the accused. PW16 said the accused pushed her to the wardrobe and told her to start packing. PW16 said after she packed up into one of the bags, the accused brought the bags and dragged her out of the room by the arm towards the living room, and due to the light coming from the street lights outside the house and the sliding door remained open, she could see that the accused took the deceased's car key which was on the bar stool. It is in evidence that the corridor was dimmed with the light came from the room as well as from the street lights. PW16 said as she was being pulled by the arm forward by the accused from the room, she had no chance to look around including the door to the kitchen and could not observe the floor in the house. PW16 said as she was scared and did as told by the accused, she did not sense something amiss in the house. In any event, PW16 said they went out of the house, and the accused locked up the iron grill and the sliding door with the deceased's keys which were attached to the deceased's car key. PW16 said they proceeded to the car porch, and the accused put her on the passenger seat of the deceased's car. PW16 said the accused reversed the car out after he opened the gate using the remote control and closed the gate. PW16 said her car remained in the car porch. PW16 said the accused drove her to a house in Tudan, Miri, which is next to a kindergarten. PW16 said, thereat the accused unlocked the gate and door to the house as shown in a photo marked P6(A). PW16 said he told her to get down from the car and enter the house. Inside the house, PW16 said the accused told her to enter the last room as in photo P6(D) wherein he took the masking tapes (exh. P77) and taped her from her shoulder to her knees. PW16 said the accused then rolled her on to the bed in photo P6(D) and took one end of the chains (exh. P78) to chain her neck and used a padlock (exh. P79(A)) to lock it and the other end of the chains (P78) tied to the bed frame and locked it with a padlock (exh. P79(B)).

PW16 said the accused took more masking tapes and taped her mouth to gag her and warned her not to try to take off the tapes or run away, or he would call his friends to hurt the deceased. PW16 said the accused told her that to avoid from being tracked by the police, he would send the car away. PW16 said the accused then left. PW16 said she waited in the room and felt asleep. When the accused came back, PW16 said he started screaming at her accusing her of defying him. PW16 said he bragged at her that her parents should never ever get involved in their relationship, that's what happens when they interfered. PW16 said the accused continued telling her that there would be no turning back to what he had done and kept repeating that her parents should not interfere and blamed them for the trouble he's in now. The accused said to her the only way out was to kill one of them, ie, the deceased or herself so that the deceased could not be the witness for her and she could not be the witness for the deceased. PW16 said the accused told her he could not sail to China or Indonesia to take her away due to the Chinese New Year. PW16 said the accused told her to choose who should die, herself or the deceased. PW16 said the accused then took out a huge plastic bag with a bottle of Clorox, some paracetamol pills and some stuff which she could not recall. PW16 said the accused took the gag out from her and asked her to pick the way she preferred to die. PW16 said he held out the Clorox and told her that it's painful and slow and the pills might be easier. PW16 said he then took out the knife P25(A) and told her that he could do it for her with the knife.

PW16 said she begged the accused by telling him that he could just forget about it and to release her and the deceased. PW16 said he told the accused to work out and agreement with her parents not to press charges against him. PW16 said however, the accused kept on repeating that there's no turning back and that what's done has been done. PW16 said she could not understand the accused, so she pressured him why there's no turning back to which the accused answered her that he was not alone in this and his friends would not allow him to let go of the deceased. PW16 noticed, while she was lying on the bed, some blood smeared on the cheek of the accused. PW16 said she asked the accused whose blood

was it on his cheek, and the accused answered it was the deceased's blood. PW16 said she queried him how come the blood of the deceased could get on to his cheek, and the accused told her that he punched the deceased as she tried to fight back. The accused said, this happened when he and his friends were taking out the deceased out of her house. On hearing this, PW16 said she was shocked and angry as it was not necessary for the accused to be rough towards the deceased as she was not strong enough to fight him back. PW16 said she asked the accused why couldn't he take the deceased nicely and not punch her, and he kept quiet. PW16 said the accused told her that his friends held the deceased captive in Bekenu and would harm the deceased if PW16 run away from him. PW16 said she was told by the accused that the deceased would only be released if she runs away with him to somewhere safe.

PW16 said the next morning the accused made a phone call to his cousin Ah Pau and asked him whether his family had figured out a way to save him. PW16 said he also asked Ah Pau for his help to drive him away but Ah Pau declined it. PW16 said Ah Pau told him that the police were monitoring him. PW16 said the accused told these conversations he had with Ah Pau to her. PW16 said the accused removed the masking tapes from her and unlocked the padlock from the chains that was tied to the bed frame to let her to go to toilet to ease herself, and the accused was holding on to the chains that was tied and padlocked to her neck. PW16 said the accused continued confining her in the room with her neck tied to the bed frame with the chains (P78) until the afternoon where he removed the chains and the masking tapes from her. PW16 said she laid down and listened to him. PW16 said the accused repeatedly said there's no turning back and either she or the deceased must die to avoid one of them to be the witness for the other.

PW16 said the accused took off the chains and the masking tapes to permit her to use the toilet. PW16 said she was not chained after coming back from the toilet. PW16 said after that the accused gave her some cookies and water from bottle. PW16 said in the afternoon PW16 just lie down and listened to him. PW16 said the accused told her that there would be no turning back, the only way out of this would be

either herself or her mother must die. PW16 said the accused said that if both of them were still alive, one would be the witness for the other. PW16 said the accused repeated what he said in the morning earlier on. PW16 said the paracetamol pills, the Clorox and the knife were left in the room the whole day for her to choose which one she would want him to take on her. PW16 said she refused to choose any of these options, instead told the accused that there would probably another way to solve their problem. PW16 said when asked by her, why the accused resorted to the death of either the deceased or herself, he retorted saying that PW16 did not understand how serious the matter was. PW16 said she told the accused to explain but was pushed and told her to shut up and not to ask too many questions. PW16 said he was mean and serious.

PW16 said by night fall, PW16 fell asleep. PW16 said she woke up over hearing the accused speaking on the phone which she assumed was his relative because he looked sad and confused and he was asking if his cousin could help to ask his parents or his uncle to help him. PW16 said the accused mentioned his cousin's name a couple of times on the phone. PW16 said when the accused finished talking, he told PW16 that his cousin, Ah Pau told him that the police was watching his cousin.

The accused said his cousin could not help because he was afraid to be caught by the police for suspicious behaviour.

PW16 said the accused did not do anything to her and now spoke nicely while she was lying down on the bed. PW16 said the accused watched her closely and did not allow her to leave the room although she could do other things in the room.

PW16 said in the morning, a man entered the house and gave the accused some food, bottle of water and cigarettes. PW16 said she was not allowed to leave the room. PW15 said after the man left, the accused went to the room with the goods and mentioned to her that it was "Derek" who came to send them some food. PW16 said they ate the foods.

PW16 said in the afternoon the accused went outside to smoke by himself, and PW16 got out of the bed and took the chains, closed the door and was trying to lock the door with

the chains tied to the bed frame. PW16 said her initial idea was to lock the accused outside so that she could call for help from the kindergarten next door. PW16 said the accused knew what she was doing and kicked the door and screamed at her and asked her if she wanted to die for doing this. PW16 said the accused charged at her, and PW16 was screaming. PW16 said the accused told her to keep quiet otherwise he would call his friends to kill the deceased. PW16 said upon hearing that she stopped screaming when he grabbed her really hard and dragged her back to the bed. PW16 said she begged the accused to forgive her, and he just kept scolding her and telling her not to tempt him to do anything harsh to either PW16 or her mother. PW16 said she felt extremely scared and kept quiet. PW16 said the accused kept on scolding her, and she tried listening to him and looked elsewhere. PW16 said the accused just sat there and watched her the whole day until she fell asleep and woke up the next day.

PW16 said when PW16 woke up the next day, ie, 5 February 2005, the accused gave her food. PW16 said in the evening, the accused forced her to have sexual intercourse with her. PW16 said at night the accused called his friend Derek again, and later the accused told her that his friend asked him to leave the house because the owner would like to see the house. PW16 said they packed the two bags. PW16 said the accused warned PW16 that she was not allowed to talk to the taxi driver, Kua Chien Siong (PW3). PW16 said they put the bags in the car and left for Tusan in Bekenu in early dawn.

PW16 said she was seated at the back seat of the taxi while the accused was seated in the front passenger seat. Upon arrival, PW16 said it was really dark so the taxi driver took out a flash light and led the way up the hill towards the house. PW16 said the accused carried both bags with him. PW16 said the accused paid the taxi fare for RM1,500. PW16 said the taxi driver took RM1,000 from the accused because the accused wanted him to buy some more food and drinks. PW16 said the balance of RM500 will be paid by the accused to the taxi driver after the food and drinks were delivered to them. PW16 said the taxi driver left and he never came back.

A PW16 said the accused told her to make up the bed and rest there. PW16 said the accused told her that if anybody comes, she should not talk to them, or he would use the knife against her. PW16 said they slept only to be wakened up by an Iban man who came to the patio of the house and asked the B accused if there was a cockerel fight that day. PW16 said the accused answered no and told him to leave. PW16 said she tried to make eye contact with the Iban man but he did not understand her. PW16 said the accused was holding the knife P25(A) behind his back, and PW16 was behind the accused C and did not dare to say anything to the Iban man. PW16 said the Iban man left. PW16 said she and the accused sat outside the house, and later the accused asked her to go into the room and lie down on the bed.

D PW16 said later in the evening two policemen came to the house. PW16 said she and the accused were in the room. PW16 said one of the policemen peeped into the room through the window and saw them. PW16 said she was too afraid to make any attempt. PW16 said the accused had the E knife P25(A) with him at all times and told her before that he would use it if she didn't listen to him. PW16 said the accused approached the main door to greet them. PW16 said the accused said to the policemen that they were just passing through and offered some money to the policemen to leave F them alone. PW16 said one of the policeman entered the room, and PW16 took this opportunity and told him that she was kidnapped and sought for his help. PW16 said she told that policeman that the accused had a knife in his left pocket and be careful. PW16 said the policeman told the other G policeman to search the accused. PW16 said the policeman found the knife from the left pocket of the accused. PW16 said the knife P25(A) was seized by Ebin bin Juanis, (PW19), PW16 said the policeman tied the hands of the accused. PW16 said she was not tied up. PW16 said the policeman H told PW16 to take the two bags (P40 and 62) and leave the house together with them.

PW16 said the policeman pulled the accused along with them down the hill, and the accused begging them along the way, and PW16 followed them down the hill. PW16 said the I policeman helped to put the two bags into the booth of the

police car. PW16 said she observed that the accused tried to push the policeman, and the policeman punched him in the stomach. PW16 said she begged the policemen to look for her mother. PW16 said the policeman brought PW16 and the accused to the Central Police Station Miri in the police car. PW16 said at the police station, the policeman asked PW16 if she recognized some of the bloody clothes, and she said in affirmative to them. PW16 said she asked them why the night gown of her mother had blood, and they did not answer her. PW16 said they placed her into the lock up, so was the accused who was placed in a different cell in the lock up. PW16 said on the expiry of remand, she was released unconditionally.

(b) Julian Jolly (PW20)

PW20, the husband of the deceased said in his testimony that on 3 February 2005 at about 8am he was outside the house of the deceased with his three workers namely Rengan @ Hasan (PW22), Michael and another whom he cannot remember the name. PW20 said they went there with the workers to wash and paint the perimeter concrete wall of the fence of the said house. P20 said all the curtains of the house were drawn shut and the front door was locked. PW20 said he noticed that all the air-conditioners were running and the windows were shut. PW20 said there was PW16's car, Proton Satria in the car porch, the main gate was closed. PW20 said he instructed his workers not to climb over the concrete wall and do the internal job. PW20 said it looked like no one in the house and called the handset of PW16 but was off. PW20 said he then called the deceased's handset, and it kept on ringing but nobody answered the phone. PW20 said he kept on calling the deceased's handphone many times but there was no answer. PW20 said so he assumed that at that point in time she was busy at work at her workplace. PW20 said he was worried as PW16's handset was off which was not normal because he used to call her very often and had no problem contacting and talking to her. PW20 said he left the place and proceeded with his daily chores leaving his workers at the house to work there. PW20 said he went to the deceased's office around noon time after 12 noon to look her up in person. PW20 said he went to the office at Beautiful

Jade Centre, Miri and knocked at the door but it was looked. PW20 said he came back around half an hour later to the same office and this time he met the deceased's colleague who told him that the deceased did not come to work. PW20 said he then called his son Ronald (PW21) on his handphone and asked him the whereabouts of his mother (the deceased). PW20 said he told him that he must go down to his mother's house at Lot 488, Jalan Lentik 2, Pujut 9B and see what happen. PW20 said he told him that he was there in the morning with his three workers and the air-conditioners were on, the curtains were drawn close and PW16's car was there. PW20 said he did not see the deceased's car there and told Ronald that something was not right, and it is not normal because he could not contact both of them. PW20 said, Ronald besides the deceased and PW16 had the keys to the house. PW20 said he felt that it was not necessary for him to go back there. PW20 said he then drove to Parkson, Miri with a friend, and whilst in Parkson, he received a call from Ronald (PW21). This was about half an hour later. PW20 said PW21 told him that "somebody kill mummy", and PW21 was crying whilst he was on the phone. PW20 asked his friend to drive him in his car to the deceased's house. PW20 went to the deceased's house and fetched his workers including PW22 from the house and sent them back to Padang Kerbau because one of his worker's car, Hassan was parked at Padang Kerbau. PW20 said after sending his workers to Padang Kerbau, he went back to the deceased's house. PW20 said PW16's car was still there. PW20 said the gate was wide open and Ronald's car was parked in the compound of the house behind PW16's car. PW20 said the main door to the house had been opened, and he entered the house. PW20 said Ronald called him from the dining area.

PW20 said he entered the house and saw the deceased's body in the kitchen area and knelt down and prayed. PW20 said he saw her body on the floor covered with blood, the head facing the floor was towards the door into the kitchen from the corridor coming from the bedroom. PW20 said the body was lying on her chest. PW20 said he saw injuries on the side torso of the deceased. PW20 said he did not see any other injuries. PW20 said he then went to the dining area and noticed that the deceased's handbag and a bunch of keys

were on top of the bar shelf and the dining area was in order. PW20 said in the sitting hall, he observed that there was blood on the sofa and on the carpet floor and a trail of blood from the sofa leading to the wooden corridor area towards the kitchen. PW20 said on the sofa there were three pillows and some were covered with blood. PW20 said the pillows on the floor were not covered with blood. PW20 said some articles were on the coffee table including a plastic cup with some water in it. PW20 said the conditions of the articles and the plastic cup of half-filed water are in the same condition as seen in photographs P7B and P7K. PW20 said he just stood there and stunned because such a gruesome thing had happened to the deceased. When the police came, he said, he spoke to them, and brought them to the kitchen area where the deceased's body was. PW20 said the police inspected the body and took photographs. PW20 said the police carried out investigations in the house and went into the bedrooms. PW20 said he followed the police when they carried out the investigations and saw in the bedroom on the right as one coming from the sitting hall, the cupboard doors were opened and clothing were in a mess on the floor, so were the conditions in the first bedroom on the left. PW20 said the clothings were also scattered on the floor, and he saw a travelling bag wide open in one of the two rooms. PW20 said the second room on the left was in order and tidy with the pillows and the beddings were tidy. PW20 said he went to the room on the right and saw some clothes on the floor and also on the bed. PW20 said he left the room and went outside of the house. PW20 said about 1 1/2 hours later he saw the police bringing the body out on the stretcher and putting the stretcher into the police vehicle and bringing the body to the General Hospital.

PW20 said on 5 February 2005 at about 9am, he was in the General Hospital Miri and identified the body of the deceased as requested by the investigating officer of this case DSP Kaderi bin Said (PW25) for the purpose of post-mortem to be conducted on the deceased's body by the doctor.

(c) Ronald Jolly (PW21)

PW21 said when he was in town with his business friend, his father (PW20) called him up and told him that his mother (the deceased) did not answer his calls, so was Christina

(PW16) whom he could not contact. PW21 said PW20 further told him that the house air conditioners were all turned on and all the doors locked, and it was not normal, so his father asked him to go and check the house. PW21 said after being informed of that, he immediately cut short his meeting, went to his car and drove to his house at Tanjung Batu 2, Miri and collected the gate remote control and the house keys to his late mother's residence and thereafter drove to his late mother's house at 488, Jalan Lentik 2, Pujut 9B, Miri.

PW21 said upon approaching the house, he opened the gate using the remote control and parked his car in the car porch of the house. PW21 said Christina's car was at the car porch. PW21 said as he came out of the car, he noticed that all the air-conditioners were on as the compressors were aloud and noisy, all the curtains for the windows and doors to the house were drawn close. PW21 said he unlocked the pad lock that locked the iron grill and opened the iron grill which was covering the front sliding door. PW21 said the iron grill itself has a lock but it was not lock then. PW21 said he pushed the heavy curtains which were right behind the sliding door and entered the house. PW21 said the house was very dark inside because of the thick curtains. PW21 said he walked straight towards the corridor and opened a room which was previously occupied by him for over 20 years before he moved out with his family sometimes in May 2004. PW21 said the living room was dark but as he entered the living room he pushed the curtains of the main door to the side a bit so there was a bit of light coming in. PW21 said he looked into his room and saw a bunch of letters which his late mother left on his table. PW21 said this was her late mother's common practice. PW21 said there are two rooms on the left and one room on the right if someone were to enter from the living area. PW21 said his room was the second room on the left which is at the end of the corridor beside the toilet. PW21 said he walked out of his room towards the corridor and walked down the two steps of the corridor into the living area. PW21 said he stopped at a place near the coffee table in the living area as he felt that area was very wet. PW21 said he looked down and saw a very dark contrast color to the light grey carpet. PW21 said he felt the carpet with his fingers and

smelled it. PW21 said it's smelled like blood, and he got panic and started screaming by calling his sister's name "Bibi" (PW16). PW21 said he realized that his late mother's spectacles and a glass of water on the coffee table. PW21 said he started screaming and called "ma, ma". PW21 said he then ran towards the corridor and opened his sister's room which is the first on the left and didn't see anyone. PW21 said so he opened the other room on the right and walked into that room and then into the bathroom and saw no one there. After that, PW21 said, he ran back towards the corridor and opened the store room door which is opposite the kitchen door. There PW21 said he saw blood on the wall, on the kitchen door opposite the store room and also on the edge of the floor of that kitchen door. PW21 said he then walked towards the living area and saw the trail of blood from the coffee table to the corridor. PW21 said he ran towards the front kitchen door through the living and the dining area and opened the front kitchen door which was closed and switched on the light of the kitchen. PW21 said he had a shock of his life to see his late mother's body (deceased) lying face down on the floor in the kitchen with her head facing the kitchen door opposite the store room. PW21 said he ran out of the house towards his neighbour's house named Merasin, which is about 40 to 50 meters away from his late mother's house. PW21 said while he was running, he called PW20 through his mobile phone and told him "somebody killed mummy". PW21 said as he reached Merasin's house, he shouted for help and said "tolong emak kena bunuh". PW21 said Merasin told him to stay calm and called the police with his house phone. PW21 said Merasin then followed him back to his late mother's house and stayed in the patio area. PW21 said he went in for quick glance at his late mother's body then came out to the patio area. PW21 said he and Merasin waited for PW20 and the police to come in the patio area. PW21 said the main gate was left opened but he was looking at the house when he was running towards Merasin's house and saw no one entered the house because while he was talking to Merasin, his eyes were always looking at the house, and that it took him one to two minutes to go to Merasin's house and back. In any event PW21 said after his father arrived at the house, he brought him to see his late mother's body through the dining area. PW21 said they knelt down and prayed and

A then went outside and waited at the patio area for the police to arrive. PW21 said he and his father tried to contact PW16 but failed. PW21 said they suspected this has something to do with the relationship between PW16 and the accused. PW21 said the police came not too long after PW20 arrived. PW21
B said the police blocked the main gate and did not let anyone to come in. PW21 said the police told him and his father to wait in the patio area and not to enter into the house. PW1 said the police then entered the house to do investigations.

C (d) Reggan @ Ramuyan Anak Ranggau (PW22)

The evidence of PW22, Renggan @ Ramuyan Anak Ranggau, the worker of PW20 who gave similar account as that of PW20 of what had happened at the house of the deceased on 3 February 2005 at about 8am. PW22 said he and two
D other workers were sent by PW20 to the house in question to do painting of the external part of the fence of the house. PW22 said the main gate was locked. PW22 said they stood outside the main gate, and PW20 made phone calls to the deceased and PW16 but he could not manage to contact
E them. PW22 said after PW20 could not contact his wife and PW16, he left them. PW22 said he entered the compound of the house by climbing over the fence beside the main gate to get water from the pipe in the compound. PW22 said as he was inside the compound of the house, he observed that the
F air-conditioners opposite the main gate were running and the front windows and main door to the house were close. After he turned on the pipe, PW22 said he climbed out and washed the external part of the main gate. And about noon, PW22 said, PW20 came to fetch them in PW20's car.
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(e) Erin Wong Wen Chinn (PW5)

PW5 Erin Wong Wen Chinn in her testimony said on 2 February 2005 at about 8.30pm. PW16 came to her house
H in Piasau to fetch her. PW16 is her close friend. From the house, PW5 said they went to Airy Cafe at Boleuvard and met Karl Lian Andrew (PW6) and their other friends. PW5 said at about 10pm, except one or two, the rest left for one of their friend's house, Gavin. After a while at Gavin's house,
I PW5 said they proceeded to Balcony Lounge in Pelita Commercial Centre to have their drinks there. Later at about

2am PW5 said she was told by PW16 that she received SMS from her friend name Ah Siang. PW5 said when Ah Siang arrived in his car at the lounge, PW16 went to Ah Siang's car, and later they left. PW5 said she also left the place. PW5 said before PW16 left, she told PW16 to give her missed call. PW5 said PW16 never called her after that.

(f) Karl Lian Andrew (PW6)

PW6 Karl Lian Andrew, one of PW6 close friends, gave similar evidence as PW5 when he said that at the material time he was with PW5, PW16 and their other friends at the Airy Cafe. PW6 said from the Airy Cafe, they proceeded to Gavin's house and later to Balcony Lounge in Pelita Commercial Centre to have their drinks there. Later at about 1.30am PW6 said PW5 and PW16 left the place. PW5 and PW16 did not tell them where they were going, PW6 said. PW6 said they continued drinking there after PW5 and PW16 left the place.

(g) Ting Thian Siong (PW4)

PW4 Ting Thian Siong, another friend of PW16 in his evidence said that on 3 February 2005 at between 1am and 1.30am, he received SMS from PW16 asking him to fetch her from Balcony Lounge at Pelita Commercial Centre. PW4 said he was at Dolphin Park at Seberkas when he received SMS from PW16. PW4 said he fetched PW16 together with his friend Ah Loong. PW4 said after fetching PW16, he together with PW16 sent Ah Loong back home at Siang-Siang Garden. PW4 said he and PW16 then went to Esplanade. Thereat PW4 said PW16 told him that she had a quarrel with her boyfriend and wanted to break off with her boyfriend but her boyfriend refused. PW4 said from the Esplanade, they drove to Dolphin pub at Seberkas and then to Balcony Lounge as PW16 wanted to take her car. PW14 said it was about 4am when PW16 took her car at the balcony. PW4 said after PW16 took her car, he followed her in his own car up to Pujut 8. PW4 said PW16 proceeded to go back to her house whereas he made a U-turn at Pujut 8 to go back to his house in Krokop.

(h) Khadijah binti Ras (PW14)

PW14 Khadijah binti Ras, the immediate neighbour of the deceased said when she came back home with her husband and two children from clinic at about 10pm on 2 February 2005 and passed by the deceased's house, she observed that the deceased's house was in the normal state with the lights on, the gate closed and a car park in the car porch, but she was not sure how many car. PW14 said after they arrived at the house, she went to the kitchen to cook for a while and then at 11pm went to bed. PW14 said as she was fast asleep and the air-conditioner in her bedroom was turned on, she did not hear anything coming from the deceased's house. PW14 said during the Christmas before 2004, the deceased held "Caroling" activities at night at her house. PW14 said as her house is fitted with air-conditioners, the doors and window were closed, so was the deceased's house, she could not hear "Caroling" activities that were being held in the deceased's house.

(i) Kua Chien Siong (PW3)

PW3 Kua Chien Siong in his evidence said on 2 February 2005 at between 11pm and 12 midnight, he received a phone call from a male person and sent him to Bekenu from Tudan with the agreed fare of RM300. He said he was a driver of private taxi. PW3 said he was given the address in Tudan by that male person. PW3 said he proceeded to the address given and fetched the accused and PW16. PW3 said they brought two or three bags with them. PW3 said PW16 was seated at the back seat and the accused on the front seat. PW3 said throughout the journey, the accused look serious, and he spoke little to him. PW3 said PW16 did not speak and just kept quiet throughout. PW3 said they reached Tusan, Bekenu at about 2am. PW3 said he assisted them to carry the bags to the house.

(j) Khairul Annwar b. Norhan (PW10)

PW10, Khairul Annwar b. Norhan, the chemist who analysed the contents of the exhibits which were admitted and marked as exhs. P15 to P24, had prepared a chemist report dated 4 May 2005 produced and marked as exh. P9, the relevant portions of exh. P29 are reproduced herein:

...

I examined and analysed the items submitted and found in:

E1 - A cotton swab bearing group B human bloodstains.

E2 - A cotton swab bearing group B human bloodstains.

E3 - A cotton swab bearing group B human bloodstains.

E4 - A cotton swab bearing human bloodstains insufficient for blood grouping

E5 - A cotton swab bearing group B human bloodstains.

E6 - A cotton swab bearing group B human bloodstains.

E7(1) - 3 strands of yarn (mop) each bearing Group O human Bloodstains.

E10(1) - A plastic bag having a small bearing group B human bloodstains.

E22 - A rubber gearbox cover free of blood

E24 - A glass bottle labelled "DIANA LEE..." containing a Specimen of group B human blood.

The contents of the exhibits were marked as P15(a), P17(a), P20(a), P21(a), P22(a), P23(b), P24(b), P16(c), P18(a) and P19(a).

In his evidence, PW10 said that he received those exhibits from PW7, Lance Corporal Samsudin bin Ahmad Said on 16 February 2005. After having duly registered them, PW10 said he kept them in the strong room under lock and key. PW10 said he took them out to analyse the exhibits. On 28 May 2005, PW10 said, the exhibits were returned to PW25 together with the chemist report (exh. P29). His main purpose in conducting the analysis was to look for traces of blood on the exhibits given and to determine the blood groupings.

PW10 said on 9 October 2006, he received two exhibits, which were admitted and marked as P12 and P13 from DSP Stanley Jonathan Ringgit to determine the blood groupings.

The exhibits, PW10 said, were sealed with "JABATAN KIMIA MALAYSIA" seals and labelled with Kuching Lab No. (KG) FOR 814/06-0. He found on analysis the exh. "E28" exh. P12, a plastic tube (labelled "Yii Soon Ho") exh. P12(a) containing a specimen of group O human blood exh. P12(b) and exh. "E30" exh. P13, a plastic tube (labelled "Christine Audrey") exh. P13(a) containing a specimen of group O human blood exh. P13(b). The chemist report of the exhibits was admitted and marked as exh. P30. PW10 said when he analysed the exh. P13(a), it had been analysed by other chemist, so it is possible that it had been contaminated which produces inaccurate result of blood grouping.

PW10 said after he analysed the exhs. P12(a) and P13(a), he repacked them into the same envelopes exhs. P12 and P13 and sealed with the "JABATAN KIMIA MALAYSIA" seals which he later kept them in his steel cabinet under lock and key. On 27 March 2007, PW10 said, he took out the exhs. P12 and P13 from his steel cabinet and handed them over to PW25 together with the chemist report exh. P30.

PW10 is a government chemist with the Chemistry Department, Bintulu Branch in Serology and Criminalistic Section. He is a member of the Chemistry Institute Malaysia. He obtained his Bachelor of Industrial Science in Chemistry from the University Technology Malaysia 1999. He started work with the Chemistry Department in Bintulu since 16 December 2002 till to date. Initially he was a production engineer in Shah Alam. To acquire experience and knowledge as a chemist, he attended courses and in house trainings.

Having considered his experience and qualification and the fact that the defence raised no objection as to his expertise, there is no reason for this court not to consider PW10 as duly qualified to give his evidence as a chemist and thus an expert by virtue of s. 45 of the Evidence Act in this trial – (*PP v. Lin Lian Chen* [1990] 2 CLJ 1020; [1990] 2 CLJ (Rep) 746).

(k) Lau Cheng Siew (PW15)

The prosecution also produced a chemist report dated 25 May 2005 under reference No. (KG) FOR 175/05-0 which was admitted and marked exh. P37. Reproduced the relevant portions of exh. P37:

A

> ...
>
> I examined the envelopes submitted and found in:
>
> "E8" – A dress bearing human bloodstains.
>
> "E9" – A T-shirt bearing human bloodstains.
>
> B
>
> "E18" – A penknife having human bloodstains
>
> On the blade housing. I took swabs from the blade, handle and blade housing of the knife for DNA analysis.
>
> C
>
> "E23" – A bottle labeled "Diana Lee Gek Tong "containing blood specimen".

The above exhibits were marked as exh. P27, exh. P28, exh. P25 and exh. P26 respectively. Among the exhibits submitted to PW15 for analysis were:

D

(a) a green dress (exh. P27(A));

(b) a grey t-shirt (exh. P28(A));

(c) a penknife (exh. P25(A));

E

(d) one glass bottle containing blood sample of (exh. P26(A)).

The main purpose of analyzing the traces of blood on the exhs. P7(A), P28(A), P25(A) and P26(A) were to develop DNA profiling. The results of the DNA profiling develop from these exhibits are succinctly stated in the chemist report exh. P37, thus:

F

> ...
>
> G
>
> No. DNA profile was developed from the bloodstains on "E8", "E9" and from the swabs of the handle and blade of knife "E18". A partial DNA profile (12 loci) was developed from the swab of thee blade housing of knife "E18". The partial DNA profile matched with the DNA profile developed from specimen blood "E23" indicating that the DNA indentified originated from the same source.
>
> H

PW15 Lau Cheng Siew gave evidence that he was a contract chemist with the Chemistry Department, Kuching Branch on 17 February 2005. PW15 was a government chemist with the Chemistry Department since April 1972 till he retired in October 2002 and re-employed on a contract basis starting November 2003 till November 2005. He is a member of the

I

A Chemistry Institute Malaysia. He obtained his Bachelor of Science in Chemistry from the University of Malaya in 1970. Upon his graduation, he worked as a chemist from April 1971 with the Chemistry Department of Malaysia, Johor Baharu. As a chemist with the Chemistry Department in Kuching, he B was attached to the Forensics Section doing mostly DNA analysis of exhibits submitted by the police. To acquire experience and knowledge as a chemist, he attended in house trainings and courses relating to analytical chemistry in Thailand and USA. He had testified in the courts numerous C times in the Magistrates, Sessions and High Courts all over Malaysia and his evidence has been accepted by those courts.

PW15 said on 17 May 2005 at about 3.24pm, he received the exhs. P27, P28, P25 and P26 from PW7, Lance Corporal D Samsuddin bin Ahmad Said for DNA profiling. The exhibits he said were sealed with "POLIS DIRAJA MALAYSIA SARAWAK IPB MIRI" seals and labelled with Lab No. [KG] FOR 175/05-0. PW15 said he kept them in the strong room in the Serology lab. PW15 said he took them out to analyse E the exhibits. PW15 said after he analysed exh. P27(A), exh. P28(A), exh. P25(A) and exh. P26(B), he repacked them into the same envelopes exh. P27, exh. P28 exh. P25 and exh. P26 and sealed with the "JABATAN KIMIA MALAYSIA" seals which he later kept them in his steel cabinet under lock F and key. On 9 June 2005 at 8.55am, PW15 said the exhibits were returned to PW25 together with the chemist report P37.

Having considered his experience and qualification and the fact that the defence raised no objection as to his expertise, there G is no reason for this court not to consider PW15 as duly qualified to give his evidence as a chemist and thus an expert by virtue of s. 45 of the Evidence Act in this trial - (*PP v. Lin Lian Chen* [1990] 2 CLJ 1020; [1990] 2 CLJ (Rep) 746).

(l) Abdul Ghani bin Harun (PW11)

H

A chemist report dated 22 January 2009 under reference No. (BT) FOR 885/08-0 was admitted and marked exh. P34. Reproduced herein the relevant portion of exh. P34:

I

...

I examined the envelope submitted and found in:

"E1" – A bottle (labelled "Christina Audrey Jolly"

"840130-13-5440" & "blood")

The above exhibits were marked as exh. P33 (the security bag with green label), exh. P33(A) (a white envelope), exh. P33(B) (a plastic packet) and exh. P33(C) (a glass bottle containing blood specimen) respectively. The exh. P33(C) was submitted to PW11 for analysis.

The main purpose of analyzing the blood specimen exh. P33(C) was to determine the grouping. The results of the grouping was that it was human blood A.

PW11 Abdul Ghani bin Harun gave evidence that he is a government chemist with the Chemistry Department, Bintulu. He has been the government chemist since 1997 till to date. He is a member of the Chemistry Institute Malaysia. He obtained his Bachelor of Science in Chemistry from the University Kebangsaan Malaysia in 1987. Upon his graduation, he was attached to Unit Tenaga Nuklear, Bangi, Selangor until 1996. Thereafter he proceeded to do his Masters in Science from Universiti Kebangsaan Malaysia, and after he obtained his Masters in Science, he joined the Chemistry Department Malaysia as a chemist. To acquire experience and knowledge as a chemist, he attended in house trainings, courses, read books and articles relating to chemistry. He had testified in the Sessions Courts all over Malaysia and this evidence has been accepted by the courts.

PW11 said after he analysed the exh. P33(C), he placed it into the same envelope exh. P33(A) and later put this envelope into the security bag of the Chemistry Department exh. P33(B). He later kept them in his cabinet inside the strong room and lock. On 22 January 2009, PW11 took out the said exhibit from his cabinet and handed them over to PW25 together with the chemist report exh. P34.

Having considered his experience and qualification and the fact that the defence raised no objection as to his expertise, there is no reason for this court not to consider PW11 as duly

qualified to give his evidence as a chemist and thus an expert by virtue of s. 45 of the Evidence Act in this trial - (*PP v. Lin Lian Chen* [1990] 2 CLJ 1020; [1990] 2 CLJ (Rep) 746).

(m) Corporal Eddy bin Abdullah (PW23)

PW23, Corporal Eddy bin Abdullah testified that on being informed of the incident on 3 February, 2005 at about 3pm PW23 and his two colleagues went to the scene. Thereat, he said, he met PW20 and PW21 at the main door to the house and instructed his colleagues to secure the area. PW23 said he went into the house and saw sofa sets, pillows on the sofa and trail of blood from the sofa to the wooden staircase. When shown to the photos exh. P7B and exh. P7K, he confirmed the positions of the sofa, the pillows and trail of blood from the sofa to the wooden staircase as seen by him in the living area. He said he saw the items on the tables in the living area, and their positions then, according to him, are the same as in photo exh. P7B. And PW23 said he also went to the kitchen and saw the deceased lying face downward on the floor covered with blood as in photo exh. P7D. After he made observations inside the house, PW23 said he reported the incident to the enquiry room. PW23 said not long PW25 came, and PW25 directed him to secure the area. PW23 said the body of the deceased was taken to Miri General Hospital as instructed by PW25. PW25 instructed PW23 to escort the body to the hospital, he said.

(n) Detective Corporal Ebin bin Juanis (PW19)

PW19, Detective Corporal Ebin bin Juanis testified that after being informed of a male and a female person at Tusan in Sibuti, Miri by a member of the public on 6 February 2005 at about 4pm, he and another colleague Detective Lance Corporal Asing Anak Kundau went there to do surveillance in a police Kancil vehicle. It took them an hour to reach the place. Thereat, he said, he saw two persons, later identified as PW16 and the accused, inside the old house. PW19 said after the accused had realized their presence, he ran out of the house through the front door. PW19 said on seeing this PW19 immediately ran to the front door and arrested him after identifying themselves as policeman. PW19 said after arresting the accused, PW16 came out of the room appearing to be in fear and shivering. PW16 said he asked PW16 to

keep quiet and not to move. PW19 said he asked for their identity cards, and from their identity cards, he could identify their names. PW19 said he seized a knife from the accused and instructed PW16 to pack their clothings into the bags (exh. P62 and exh. P40). PW19 said after packing the bags, the accused and PW16 were brought to the police vehicle. PW19 said he took custody of the knife exh. P25(A). The accused and PW16, PW19 said, were healthy and no visible injuries on their body. PW19 said the accused was in the state of fear. PW19 said at the Central Police Station Miri, the accused, PW16 and the two bags (exh. P62 and exh. P40) were brought to the Narcotics Office. PW19 said he informed PW25 about the arrests after he lodged a Police Report No.1483/2005 (exh. P75). When PW25 had arrived at the police station, PW19 said, he surrendered the accused, PW16, the two bags (exh. P40 and P62 with their contents) and the knife (exh. P25(A)) to PW25. In court PW19 identified exh. P40 and exh. P62 as the items that were seized. PW19 also identified the exh. P25(A) as the knife seized from the accused. PW19 identified the accused in court as the person they arrested. The contention of the defence that the various names of the place where the accused was arrested and the knife (P25(A)) was seized does not alter the fact that the knife (P25(A)) was found and seized from the accused witnesses by PW16. The knife (P25(A)) was identified by these witnesses.

(o) DSP Kaderi Hj Said (PW25)

The investigating officer, DSP Kaderi Hj Said also gave evidence. The relevant aspects of his testimony under this ingredient 3 is that (1) he handled all the exhibits collected in connection with this case and sent them for examinations by chemists; (2) he directed the deceased body to be brought to the hospital and he was presence during the post mortem; (3) he identified the accused in court as the person arrested; (4) he drew the sketch plan of the scene of the incident; and he identified exh. P25(A) as the knife seized from the accused that being handed over to him.

A **Other Circumstantial Evidence**

Knife (exh. P25(A))

[40] It was the evidence of PW16 that she saw the knife exh. P25(A) on the night in question after she came from her night jaunt where the accused had used it to charge at her gesturing in a stabbing manner.

[41] PW16 also testified that she had seen the knife exh. P25(A) prior to that night as the accused had on several occasions used it against her. PW16 also said the accused was in possession of the knife when she was at the house in Tudan as well as at the house in Tusan, Bekenu until it was seized by the police. It was her evidence that the knife exh. P25(A) was seized from the accused in Tusan by PW19.

[42] PW19 said he seized the knife exh. P25(A) from the accused and later handed it over to PW25.

[43] PW15 said in his chemist report (exh. P37) stated that "A partial DNA profile (12 loci) was developed from the swab of the blade housing of knife "E18". The partial DNA profile matched with the DNA profile developed from specimen blood "E23" indicating that the DNA identified originated from the same source". The blood sample marked E23 (exh. P26(A)) was the blood sample of the deceased.

[44] It was in evidence that the probable weapon used as testified by the pathologist (PW12) to inflict the injuries, in particular, the two (2) fatal wounds on the deceased was the knife exh. P25(A). His opinion was based on the length of the blade of exh. P25(A) which is 8.5cm in length and 2cm in width.

[45] It is sufficient circumstantial evidence that the accused had used the knife exh. P25(A) to cause the fatal wounds and other injuries on the deceased.

[46] On the assertion of the defence that the prosecution has adduced three different localities as to the place where the knife exh. P25(A) was seized from the accused, this court found that the prosecution has adduced ample evidence through PW16 and PW19 that the knife exh. P25(A) was seized from the accused in Tusan, Bekenu as discussed earlier in this judgement.

[47] Furthermore, the police report (exh. P75) has strengthen and confirmed the evidence of PW19 in court as well as the evidence of PW16 that the knife was seized from the accused by PW19 in Tusan, Bekenu (*Karthiyayani & Anor v. Lee Leong Sin & Anor* [1974] 1 LNS 61; [1975] 1 MLJ 119 and s. 157 of the Evidence Act.)

Key (exh. P39)

[48] It is not disputed that the accused had the key exh. P39 to the sliding door of the deceased's house.

[49] PW16 said in her evidence that she left the key with the accused, and the last time she requested it to be returned to her was on 2 January 2005, the date when she finally broke up with the accused. It was testified by PW16 that the accused refused to return it to her.

[50] She said she saw the accused having the key again on 3 February 2005 at about 4am when she was forced to leave the house for Tudan.

[51] PW16 testified that she pulled the iron grill, which was as usual, being left unlock by the deceased, and unlocked the sliding door with her own key when she entered the house that early dawn of 3 February 2005.

[52] It is not disputed by the defence that the accused could have access to the house at any time with the key (exh. P39) till the date of the alleged incident, and was in possession of the key until it was seized by the police.

[53] It was in evidence that there was no sign of break-in at the house at that material time when the deceased was found dead in the kitchen.

[54] Therefore it is beyond doubt that the accused had an easy access to the house with the key (exh. P39) at that material time in question when the alleged offence occurred. This explains why there was no sign of break in at the house.

Subsequent Conducts Of The Accused

[55] The facts that after the commission of the alleged crime, the accused had threatened PW16 and made attempts to conceal the murder of the deceased from PW16 are relevant facts – (illustration (i) of s. 8 of the Evidence Act).

[56] In the light of these facts, eg, after the commission of the alleged crime the accused attempted to conceal things (under illustration (i) of s. 8) showed that such conduct was relevant to the charge arraigned against the accused.

[57] This was a conduct consistent with that of a guilty mind of the accused, and thus, capable of amounting to an admission of guilt as there was a nexus between the conduct of the accused and the offence with which he has been charged.

[58] In the case of *PP v. Letchumanan* [2000] 4 CLJ 685; [2000] 4 MLJ 449, it was held that for the flight of the accused (eg, absconding under illustration (h)) to be capable of amounting to an admission of guilt there must be a nexus between the conduct of the accused and the offence with which he has been charged.

[59] In the case of *Krishna Jayaram v. PP* [1989] 1 LNS 73; [1989] 3 MLJ 272, the appellant had set up a meeting with the person who had bribed him. In the light of this it was held that s. 8, in particular illustration (e) showed that such conduct was relevant to the charges against the appellant. It was conduct consistent with that of a guilty mind of the accused and that the judge was entitled to draw such inference therefrom as he deemed fit.

[60] Illustration (c) of s. 9 of the Evidence Act is also relevant which explains the facts that after the commission of the alleged crime, the accused had threatened PW16 and made attempts to conceal the murder of the deceased. This is relevant under s. 8 of the Evidence Act as conduct subsequent to and affected by the facts in issue, ie, the accused threatened PW16 and concealed the murder of the deceased from her as explanatory of the accused's conduct.

[61] Therefore the onus is on the accused to explain his conduct, ie, he threatened PW16 and concealed the murder of the deceased from her after the commission of the alleged crime. A failure on the part of the accused to put forward any explanation of threats and concealment of murder from PW16 after the occurrence of the alleged crime is a point in favour of the prosecution.

[62] In the case of *PP v. Mansor Md Rashid & Anor* [1997] 1 CLJ 233; [1996] 3 MLJ 560, the Federal Court held that the intention of the accused persons to flee, when considered in the light of the evidence adduced, justifiably necessitated some explanation from them. A failure to put forward any explanation of absconding after the occurrence of a crime is a point in favour of the prosecution (see also *PP v. Reza Mohd Shah Ahmad Shah* [2002] 1 LNS 157; [2002] 4 MLJ 13 p. 21].

Previous Conducts Of The Accused

[63] In the case of *PP v. Hanif Basree Abdul Rahim* [2004] 3 CLJ 700; [2004] 3 MLJ 271, the court said about motive at p. 734 (CLJ); p. 299 (MLJ):

> In a criminal prosecution, motive behind a crime is a relevant fact on which the evidence can be given. It is a sentiment which provokes a person to form an intention. In Ratanlal and Drajlal's *Law of Crimes*, 24th edn p. 1391, the learned authors made this comment:
>
> > Proof of motive satisfies the judicial mind about the authorship of the crime but the absence does not *ipso facto* result in an acquittal of the accused. Motive is not a *sine quo non* to prove the case of the prosecution. Absence of proof only demands deeper forensic search and cannot undo the effect of evidence if otherwise it is reliable and sufficient ...
>
> [66] It is not incumbent upon the prosecution to prove the motive for a crime. However if the crime is alleged to have been committed for a particular motive, as is the case here, it is relevant to inquire whether the pattern of the crime fits in with the alleged motive. Where a case is based on a circumstantial evidence the motive for committing that crime assumes greater importance. It is certainly an important strand of circumstantial evidence to impute the accused's guilt ...

[64] In the present case, it is not disputed that the deceased was a hurdle for the accused to continue his relationship with PW16. It was the evidence of PW16 that the accused alleged that the deceased interfered with his relationship with PW16 and was angry at the deceased. This was confirmed by PW13, Evelyn Storrie Ak Marin, the friend of the deceased, who gave evidence that the deceased had told her that the deceased dislike the accused to have a relationship with PW16 because according to the deceased the accused was jobless and a gambler and she

wanted PW16 to further her studies. The deceased also told her that the accused always threatened her and uttered the words "satu hari baru kamu tau" to her.

[65] There was also an incident one month prior to the present incident at the deceased's house where the accused have created the scene after he forcibly took PW16 out of the deceased's house and brought her to Bekenu where he assaulted PW16. Not happy with the incident, the deceased lodged the police report (exh. P38) against the accused, and as a result the accused was arrested by the police.

[66] Although the deceased had withdrawn her police report (exh. P38) against the accused, there was in evidence, and which was not disputed by the defence, that the accused drove his car back and forth in front of PW16's house stalking on PW16 many times throughout one month after the incident on 3 January 2005.

[67] In the premise, the facts above have bolstered the inference that there was an intention on the part of the accused to commit the alleged crime.

Issues Raised By The Defence

The Presence Of A Third Party

[68] The defence submitted that due to the presence of blood "O", there raises the possibility of a third party being present after the accused and PW16 had left the house and this third party could have killed the deceased.

[69] This surmise or conjecture by the defence that there was third party in the present case is acknowledged because exh. P30 shows that PW16 had "allegedly" blood Group "O". This result was explained by PW10 whose tasks were to determine the blood grouping that when he received exh. P30 to determine the grouping, according to him, it had been analysed by another chemist as the exh. P30 was sealed with "JABATAN KIMIA MALAYSIA". Thus, he opined that it could have been contaminated when he determined the grouping.

[70] According to PW11, the blood grouping of "CHRISTINA AUDREY JOLLY" (PW16) is "Blood Group "A" Human Blood and not Blood Group "O". PW11 was asked by PW25, who drawn the blood sample from PW16, to determine the grouping.

[71] In the present case, the three strand of yarn (mop), exh. P24(B) and the blood on the grill exh. P23(B) had blood group "O" on them, so was the blood group of the accused which is a group "O" human blood exh. P12(A) as in the Chemist Report exh. P30. The defence has not challenge as to the blood grouping of the accused as being the blood Group "O".

[72] In any event, in the light of the evidence adduced, and the fact that the knife exh. P25(A) which was recovered from the accused trousers had bloodstains of the deceased, the irresistible inference is that the Group Blood "O" on the three strand of yarn (mop) exh. P24(B) and the blood on the grill exh. P23(B) was that of the blood group of the accused which is a group "O" human blood exh. P12(A). Unless the accused had suffered a cut and bleed (no matter how small the cut was), there could not be the blood group "O" (belonging to the accused) to be found on the grill of the house and on the three strands of yarn in the kitchen of the house. By the time PW8 examined the accused on 8 February 2005 at about 1pm, the small cut on the hand of the accused suffered when he attacked the deceased with the knife has healed.

[73] In the case of *Perwira Habib Bank Malaysia Bhd v. Megat Najmuddin Megat Khas & Ors* [1999] 4 CLJ 517 p. 524; [1999] 5 MLJ 334 p. 334, the court on the roles of experts and the courts on a proper and competent conveyance, the expert said:

> ... this case does not need an expert to assist the court ... One may tempted to hold that an expert evidence in relation to a particular situation is more as a result of hindsight. In a situation such as this, I hold that the true test is the foresight of a reasonable man and not the hindsight of an expert.

[74] Therefore when the accused moped the floor with the mop (exh. P90(A)) and locked the iron grill when he and PW16 left the house, it is reasonable to infer from the circumstances of this case some of his blood might dripped on them from the small cut on his finger.

[75] Be that as it may, even without this inference there are ample other evidence against the accused in this case.

The Date The Deceased Was Found Dead

[76] There is sufficient circumstantial evidence that the deceased died on the date and time as mentioned in the charge.

[77] The prosecution has adduced ample evidence through PW16 that she was forcibly taken out of her house by the accused after she came back from her night jaunt at about 3am on 3 February 2005.

[78] It was in evidence that the accused had threatened PW16 and concealed the murder of the deceased from PW16 when he forcibly took her to follow him to Tudan, and later to Tusan in Bekenu.

[79] PW16 gave evidence that she only realized that her mother was murdered when she was brought and detained at the Central Police Station Miri on the evening of 6 February 2005.

[80] It was the evidence of PW20, PW21 and PW25 that the body of the deceased covered with blood was found in the kitchen of the deceased's house on the afternoon of 3 February 2005. It was also in evidence that the body was brought to the hospital on the same day the body was found dead in the kitchen. On the same day also PW23 escorted the body to the hospital from the deceased's house.

[81] The evidence of PW12, Dr Jamil Dolkadir, who conducted the post-mortem on the body of the deceased on 5 February 2005 at about 9am, was confirmed by PW20, who identified the body as that of his late wife upon a request of the investigating officer, PW25. PW25 also present when PW12 conducted the post-mortem of the deceased on that day.

[82] Therefore this court treated the oral evidence of PW12 as substantive evidence and hold that in the light of the evidence adduced the date as "13 February 2005 at about 2.30pm the victim son found her died at her house at Pujut 9, Miri ..." stated in the post-mortem report exh. P35 is not fatal to the prosecution's case – (*Muhammed Hassan v. PP* [1998] 2 CLJ 170; [1998] 2 MLJ 273 and *Mohd Yusof bin Said v. PP* [1996] 2 CLJ 13).

[83] The purpose of production of the post-mortem report (exh. P35) is to strengthen or confirm the evidence of PW12 in court and certainly not to conflict such evidence (*Karthiyayani & Anor v. Lee Leong Sin & Anor* [1974] 1 LNS 61; [1975] 1 MLJ 119 and s. 157 of the Evidence Act).

[84] This court must not look at a single event in isolation but to link up with one another as to be read one integrated whole, not separately.

[85] In the present case, the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that the murder of the deceased person was committed by the accused and no one else on the date as stated in the charge.

[86] Due to the foregoing reasons, looking at the evidence adduced in its entirety and on the strength of the series of circumstantial evidence adduced before this court and upon considering the cumulative effect of each strand of circumstantial evidence so produced, leads this court to the irresistible conclusion that it was the accused who committed the crime.

[87] Therefore this court hold that the prosecution has *prima facie* established this ingredient.

Fourth Ingredient

[88] For this ingredient, this court has to look at the nature and number of injuries caused to the deceased person by the accused. The evidence of PW12 as discussed hereinabove described the nature and number of injuries sustained by the deceased person.

[89] PW12 said there were 15 wounds all over the body of the deceased, two of which were fatal wounds penetrating the right lungs that caused the right chest bleeding (right haemothorax). The rest were inflicted with strong to moderate force by a sharp object like the knife P25(A).

[90] According to PW12, out of fifteen injuries, there were two possible defensive injuries Nos. 11 and 12 (in the post mortem report of P35) sustained by the deceased on her left wrist. PW12 said these injuries were not fatal injuries. So it would be fair and reasonable to infer that such injuries could not be associated with a struggle or a fight as the other 13 injuries were not defensive injuries. If there was a struggle or a fight, surely the deceased would be moving around when she was attacked with a sharp object like the knife P25(A) and injured the other parts of her bodies when she varied her positions during the struggle or fight. In this premise, it would be probable that the injuries could be inflicted after she had sustained the fatal injuries and fallen down.

[91] There were evidence through PW13, PW16, PW20 and PW21 that there was a bad blood between the deceased and the accused. According to ASP Nor Aizan (PW26), the deceased lodged a police report P38 against the accused on 3 January 2005

at 1.20pm at the CPS Miri because she alleged that the accused took away her daughter (PW16) from her house in a car and ill-treated PW16.

[92] Be that as it may, the deliberate use by some means of dangerous weapon, as in this case the knife P25(A), is another factor that leads to an irresistible inference that the accused's intention was to cause death - (*Tham Kai Yau & Ors v. PP* [1976] 1 LNS 159; [1977] 1 MLJ 174).

[93] In *Tan Buck Tee v. PP* [1961] 1 LNS 130; [1961] MLJ 176, the Court of Appeal (Malaya), as it then was, had said on intention to kill the person on whom they were inflicted may be adduced from the evidence, thus:

> There was the body with five appalling wounds on it, wounds penetrating to the heart and liver, which must have been caused by violent blows with a heavy instrument like an axe. In the absence of anything else, whoever inflicted those blows must have intended to kill the person on whom they were inflicted. There was no evidence as to the circumstances surrounding the killing ...

[94] Looking at the nature and number of injuries sustained by the deceased person and the type of weapon used, the prosecution has *prima facie* established this ingredient that there an irresistible inference that it was the intention of the accused to cause such death of the deceased.

Conclusion At The End Of Prosecution's Case

[95] For the foregoing reasons, this court found that the prosecution has proven a *prima facie* case against the accused as charged.

[96] The accused is therefore called upon to enter his defence on the said charge.

Defence Case

[97] The three alternatives were explained to the accused and the accused elected to give sworn statement and called four other witnesses.

Duty Of The Court At The End Of The Defence's Case

[98] Before embarking on the nature of the evidence adduced by the defence, perhaps at this juncture it is prudent to look at the duty of this court at the close of the case for the defence. Section 182A of the Criminal Procedure Code reads as follows:

> [1] At the conclusion of the trial, the Court shall consider all the evidence adduced before it and shall decide whether the prosecution has proved its case beyond reasonable doubt.
>
> [2] If the Court finds that the prosecution has proved its case beyond reasonable doubt, the Court shall find the accused guilty and he may be convicted on it.
>
> [c] If the Court finds that the prosecution has not proved its case beyond reasonable doubt, the Court shall record an order of acquittal.

[99] The duty of the court at the close of the defence's case is as expounded by the court in *PP v. Kenneth Fook Mun Lee & Another Appeal* [2006] 1 CLJ 499; [2006] 2 AMR 44:

> ... Section 180 of the Criminal Procedure Code (CPC) provides that when the case for the prosecution is concluded, the court shall consider whether the prosecution has made out a *prima facie* case against the accused and if the court finds a *prima facie* case has been made out against the accused on the offence charged the court shall call upon the accused to enter on his defence. We do not think it is the duty of the court at this stage to anticipate or speculate any defence that has not been raised and give due consideration to it. More so, a defence categorically denied to be the line of defence to be taken as in this case. Consequently s. 181 of the CPC provides that when the accused is called upon to enter on his defence, he or his advocate may then open his case, stating the facts or law on which he intends to rely and making such comments as he thinks necessary on the evidence for the prosecution. He may then examine his witnesses and consequently sum up his case. Section 182A of the CPC provides that at the conclusion of the trial, the court shall consider all the evidence adduced before it and shall decide whether the prosecution has proved its beyond reasonable doubt.
>
> Anyway, in support of his view that it was the duty of the court at the conclusion of the case for the prosecution to consider a defence if the evidence adduced discloses it even if it has not been raised at that stage, the learned trial judge referred to the decision of this court in *Chan Chor Shuh v. PP* [2003] 1 AMR 748 and his own decision in *Abdullah b. Jacomah v. PP* [2002] 6 MLJ 324.

A In *Chan Chor Shuh v. PP* this court held that the law requires the trial judge to consider all the evidence that has been adduced in support of the defence and that the court must consider carefully whether a defence put forward is capable of raising a reasonable doubt in the prosecution's case …

B **[100]** In *Abdullah Jacomah v. PP* [2002] 8 CLJ 1; [2002] 6 MLJ 324, the court said:

… The law governing a proper appraisal of a defence that has been advanced is well settled. It requires a consideration of all
C evidence that have been adduced in support of the defence [see *Chang Swee v. PP* [1985] 1 MLJ 75; *Mohamed Shariff v. PP* [1964] MLJ 64]. A court must consider carefully whether a defence that has been put forward is capable of raising a reasonable doubt in the prosecution case …

D **[101]** In *Chang Lee Swee v. PP* [1984] 1 LNS 134; [1985] 1 MLJ 75, the court said:

… the conviction should be set aside not only because it was against the weight of the evidence but also because the learned president had failed to consider fully the defence evidence.
E

It was also similarly decided in *Mohamed Shariff v. PP* [1964] MLJ 64, thus:

… the conviction should be set aside not so much that it was against the weight of the evidence but because in my
F view thee learned trial Magistrate had failed to consider all the evidence that was before him and in that sense had failed to consider the defence evidence.

Duty Of The Accused At The Defence's Case

G **[102]** This court is mindful that the duty of the accused person at the defence's case is merely to cast a reasonable doubt on the prosecution's case, and this is best summed up by the court in *PP v. Saimin & Ors* [1971] 1 LNS 115; [1971] 2 MLJ 16:

H … A reasonable doubt must be a doubt arising from the evidence or want of evidence and cannot be an imaginary doubt or conjecture unrelated to evidence.

[103] In *PP v. Sam Kim Kai* [1960] 1 LNS 99; [1960] MLJ 265, the court said:
I

… In order to warrant such an acquittal, the defence put forward must be a story that leaves the Court - whether it be a trial by a Judge or Magistrate sitting alone, or a trial by trial - in a

> genuine and reasonable doubt as to whether the explanation put forward by the accused that he did not know the property was stolen, may not, in fact, be true. If the Judge - or jury - believes his explanation then, of course, he - or they - must acquit. Similarly, if they disbelieve his story, they must convict.

[104] In *Dato Mokhtar Hashim & Anor v. PP* [1983] 2 CLJ 10; [1983] CLJ (Rep) 101; [1983] 2 MLJ 232, the Federal Court then said:

> ... the test to apply at the end of the defence is still the normal test, that is whether the defence has cast a doubt on the truth of the prosecution story. To warrant an acquittal however the doubt created must not merely be a fleeting doubt or a capricious doubt but a doubt in respect of which a substantial reason can be given. The question to ask now is - has the defence evidence created a reasonable doubt on the truth of the prosecution story?

[105] And in *Ayoromi Helen v. PP* [2005] 1 CLJ 1, the court said it was not a reasonable doubt:

> ... where the story is itself of incredible or romancing character, or the abstention arises from mere motives of delicacy or when counsel indicates that he is merely abstaining for convenience, eg, to save time ...

Evidence For The Defence

Whether The Accused Suffering From Major Depressive Disorder (MDD)

[106] Both DW4 and PW30 testified that the symptoms of MDD must at least consist of five criterions or symptoms for Major Depressive Disorder such as poor sleep, poor concentration, suicidal thoughts, loss of appetite and weight, markedly diminished interest or pleasure in all or almost activities most of the day, nearly everyday, insomnia or hypersomnia nearly everyday, psychomotor agitation or retardation nearly everyday (observed by others), fatigue or loss of energy everyday, feeling of worthlessness or excessive or inappropriate guilt nearly everyday, diminished ability to think or concentrate or indecisiveness nearly everyday, recurrent thoughts of death and recurrent suicidal without any specific plan for committing suicide.

[107] The first four symptoms must occur most of the day, nearly everyday. The first criteria such as depress or low mood, or lack of interest coupled with at least four other symptoms must be present during the same two weeks before a person can be said to be a MDD sufferer.

[108] PW30 further said those symptoms must be present together with impairment of function or distress or change in functioning during the same period of two weeks. Meaning PW30 said it means the patient is suffering from Major Depressive Disorder with psychosis only if Major Depressive Disorder is severe and there is the presence of psychosis. Thus, anything less than that a person would not be considered suffering from Major Depressive Disorder.

[109] All those symptoms, PW30 said must cause a significant distress or impairment in social, occupational or other important area of functioning.

[110] On the state of mind of a person who is allegedly to be a MDD sufferer, PW30 said this:

Q : How many times have you testified in Court in respect of Major Depressive Disorder patient that you have examined?

A : None with Major Depressive Disorder patient because generally Major Depressive Disorder patients not brought before the Court.

Q : Can you give the reason?

A : Because Major Depressive Disorder patients are normally tried as normal individual. Major Depressive Disorder sufferers are considered as being aware of what they were doing and has being aware of the nature of what they were doing.

[111] In testifying on the state of mind of the accused at the time of the alleged incident, DW4 said this:

Q : In the present case there was evidence that the Accused got the key to the house of the Deceased and the house was locked and that he managed to enter the house with the key from the main entrance right before the killing. Are these acts consistence with the Accused allegedly suffering from Major Depressive Disorder.

A : Yes, it is possible.

Q : It means he knows what he was doing?

A : In the notes he says he doesn't remember. Probably he knew what he was doing.

Q : He brought along with him a flick knife and stabbed the Deceased where the Deceased sustained 8 injuries and later the body was allegedly dragged from the sofa in the house went through the living room, passed through the wooden corridor and later laid to rest in the kitchen. Can the Accused allegedly suffering from Major Depressive Disorder perform these actions?

A : Yes, it is possible.

Q : It shows that he knows what he was doing?

A : Probably but he told us he could not remember.

Q : Later there is evidence that the bloods from the sofa to the kitchen were wiped away. Again can the Accused suffering from this episode do this?

A : Yes, it is possible.

Q : This conduct shows that he knew what he was doing, do you agree?

A : Yes, it is possible.

Q : Can the Accused who was allegedly suffering from Major Depressive Disorder remember on one occasion and shortly later could not recall the subsequent incident and shortly later remember the next incident?

A : Actually this kind of phenomena where a person is unable to remember events at the particular times occurs if the event had been very mentally traumatic or stressful to him. The mind automatically represses the traumatic event from the memory. So this is what could have happened in the case of his Accused.

Q : The Accused came to the Deceased's house at 9pm on 2.2.2005 and remained there until 3am the next day, ie, 3.2.2005. Can the Accused experience "awake" at one moment and the next moment he "black out" and then "awake" again within seven hours?

A : Yes, it is possible as mentioned above.

Q : During that "black out" was he aware of what he was doing?

A : I am not sure.

Q : Can the Accused perform the acts, ie, the acts of stabbing by inflicting 8 injuries when he was "black out"?

A : Yes, it is possible.

Q : When the Accused was allegedly in a "black out" episode, can he remove the body from the living room to the kitchen?

A : Yes, it is possible.

Q : It means his memory remain intact, do you agree?

A : I disagree.

Q : Exhibit D7 page 5 referred. Refer to the first paragraph, the last 4 line (reads). Can I safely say that he remember what was transpired during the alleged "black out"?

A : I am not sure because he says "dia tidak sedar".

Put : That once the Accused has regained his memory he will remember it until he gave his evidence in this Court, do you agree?

A : I am not sure.

Q : In his evidence the Accused said after taking 20 tablets of "Eramin 5" at about 6pm to 7pm on that day, ie, 2.2.2005 he dozed off and woke up and went to the Deceased's house, but he could not remember how he came to the house. Can the Accused who was allegedly suffering from Major Depressive Disorder do this?

A : Yes, it is possibly due to the after effect of taking 20 tablets of "Eramin 5".

[112] In testifying on the state of mind of the accused at the time of the alleged incident, PW30 said this:

Q : What is your opinion about the state of mind of the Accused at the time of the incident, ie, 29.2.2005 between 9pm and 12 midnight and also subsequent until he was arrested by the police?

A : Based on the examination of the Notes of Proceedings including the case notes, police summary, social work report and autopsy report, my opinion is that the Accused knew what he was doing all the times until his arrest by the police and that he has no loss of memory.

Q : The Accused said after taking 20 tablets of "Eramin 5" or "Happy 5" at his house, he dozed off and later woke up and the next thing he realized he was at the gate of the Deceased's house. What is your opinion as to the state of mind of the Accused when he said he could reach the house of the Deceased after waking up?

A : My opinion is that he was fully conscious and aware what he was doing.

Q : There is evidence before this Court that the gate to the house of Deceased was locked and the iron grill was locked and the sliding door to the main entrance of the house was closed and the Accused was in the house. Can you give the opinion whether the Accused who claimed to have lost his memory entered into the house and what is the state of mind of the Accused at that material time?

A : Yes that he was aware when he entered the house because he was aware of what he was doing. In my opinion there was no loss of memory.

Q : The Accused stabbed the Deceased in the house and later dragged her body from the living room to the kitchen, is this consistent with someone who claimed to have lost his memory?

A : In my opinion it can happen that a person who claimed to have lost his memory about things that he had done to have actually done those actions.

Q : When he did the acts above was he aware of what he was doing?

A : In my opinion he was aware of what he was doing.

Q : After the Accused dragged the body into the kitchen, the Accused wiped away the blood from the sofa in the living room until to the door to the kitchen, and later put the mop in one of the toilet in the house. Was he aware of what he was doing?

A : It is my opinion that he was aware of what he was doing.

Q : After the killing and when Christine Audrey Jolly came back from her night jaunt at about 3am the next day the Accused pinned her down and threatened her not to make noises as her mother (the Deceased) was in his friend's hands and later dragged her to the bedroom and asked her to collect her personal belongings. The Accused later brought the two bags with him and dragged Christina Audrey Jolly out of the

A room and made an exit from the main entrance of the house and forced her into the car and the Accused locked the door. He droved the car to Senadin with Christina Audrey Jolly. What is the state of mind of the Accused when he did all these?

B A : In my opinion he was aware of what he was doing.

[113] When DW4 was re-examined on the eight injuries sustained by the deceased, he said this:

C Q : The 8 injuries sustained by the Deceased together with the circumstances discovered by you and your team about the time of the killing, what does it indicate about the state of mind of the Accused?

A : It showed that the Accused must has been in the state of rage and frenzy and probably when out of control.
D

[114] On this view, PW30 said:

Q : Dr. Rajinder said the 8 injuries sustained by the Deceased together with the circumstances discovered by him and his
E team about the time of the killing showed that the Accused must has been in the state of rage and frenzy and probably went out of control. Can you have your opinion on this opinion?

A : Before I give my opinion I would like to mention that the
F outopsy report said that there were 15 injuries, 12 of which is stabbed wound and 3 were cut wounds and of these injuries two were inflicted with considerable force. Out of the 15 injuries, 13 were injuries inflicted to the front of the victim and 2 were to the back off the victim. My opinion is
G that these are the injuries inflicted by somebody who was very angry and intended the injuries to cause serious harm to the victim. As to the state of mind my opinion is that the Accused knew what he was doing that means the Accused was stabbing and intending to cause harm to the victim. Regarding self control, I would like to say that the
H issue here is not loss of control but a willingness or lack of to exert reasonable control. What I am saying is in general that we all grow up learning to exert control and we are expected to exert that control over our actions. In this case, it is not that the Accused has lost control but he is not
I willing to control himself. Ability to control can be affected by the Accused's emotion towards the victim. So this can be his anger or hatred or as part of his personality or due to some mental disorders that the Accused is suffering. So

my opinion is that the Accused was angry at the victim both because of past experiences with the victim as well as probably being discovered entering the house and being surprised of the victim's presence in the house when he entered the house. That would cause the Accused to be less able to control his actions or his impulses. I do not know what Dr. Rajinder meant by the word of "frenzy". This term in psychiatrist we normally do not use.

[115] When PW30 was crossed-examined on the state of mind of the accused, he went on to say:

Q : You said based on the case notes, police summary, social work report and autopsy report, your opinion is that the Accused knew what he was doing all the time until his arrest by the police and that he has no loss of memory. In the case notes and police summary it was consistently recorded that the Accused is not aware of what happened at the very least from the time the Deceased and Accused confronted each other till the time the Accused realised what had happened. Did you take this information into account when you came into your opinion?

A : I did take that information into account when I came to my opinion. This is because generally loss of memory do not occur for such a short period of time in addition when taking into account the autopsy report on the nature of injuries suffered by the victim it shows that the injuries have been inflicted with intent to cause serious harm to the victim. It indicates that the injuries were inflicted with conscious awareness. The Accused claimed that he was not aware (tidak sedar) and not loss of memory (tidak ingat). As such my opinion that there was no actual loss of memory. The Accused was during the moment of inflicting the injuries highly arouse by his anger and as such may not be aware of how many injuries he had inflicted. This is how I interpreted the phrase 'tidak sedar'.

[116] In cross-examination, PW30 went on to say that the power of reasoning is not impaired in a MDD episode:

Q : In major Depressive Disorder cases without psychosis the patient may be aware of his action but cannot tell right from wrong because his power of reasoning is impaired, do you agree?

A : I disagree.

[117] On the effects of taking "Eramin 5" or "Happy 5" on human mind, PW30 said in cross-examination:

Q : Do you know the effect of drug called "Nimetezepam" also known as the street name "Happy 5" and brand name "Eramin on the human mind?

A : Yes I have read about it.

[118] On being asked whether after consumption of "Happy 5", the accused may not be fully conscious or aware of what he was doing or maybe more susceptible to loss of self-control especially with him suffering from MDD, PW30 said:

A : There are two parts of the question here. On the first part I disagree as the Accused was fully conscious and is aware of what he was doing. The second part I would agree that a person who takes a drug like "Eramin" maybe less able to control his impulses or emotions. That means if he is angry before taking "Eramin" he would probably feel even more angry after taking the drug because generally drug enhance the state of existing emotion.

Q : If the Accused had indeed taken "Eramin", is it possible for him to get angry after the consumption of the drug, meaning the emotion of anger came after the consumption of the drug?

A : In this instance the anger was pre-existing and taking the drug would make him more angry or less able to control his anger.

Q : Do you agree with me that the Accused intention was to go and "get" ie, to take his girlfriend away from the house?

A : I would agree with that because he had done that twice previously.

Q : The desire to take away the girlfriend is not anger, do you agree?

A : I would agree with that statement but the Accused does not have only one emotion at the time he went to the house. He probably have a mixture of emotions either upset, anger, depress and anxiety.

Q : You are aware he was taking "Eramin" for two to three weeks prior to the incident?

A : Yes that was what he told the doctor as recorded in the case notes.

Q : In your opinion did the anger pre-exist the taking of the drugs?

A : Yes, it would be one of the emotions that pre-existed.

Q : Do you agree that being aware of what the Accused did and he having instances of loss of memory are two different things?

A : I never said that he has loss of memory. Yes they are two different things.

Put : That the accused was not aware of what he had done to the Deceased.

A : I would disagree with that based on the reasons I have given earlier.

Put : That the Accused may have loss his memory by virtue of memory being repressed due to the events being traumatic, do you agree?

A : I would disagree with that. My opinion is based on the documents that I have lead as well as existing knowledge on how loss of memory occurs.

[119] Therefore it is crystal clear from the evidence above that the consciousness of a person like the accused claiming to be a MDD sufferer is not impaired and remains intact and thus aware of what he was doing and knew the nature of the acts and can tell right from wrong because his power of reasoning is not impaired.

[120] The evidence of DW4 as to the state of mind of the accused at the time of the incident requires careful scrutiny. He said he prepared the report exh. D6 of the accused when he was hardly involved in the examinations of the accused as can be seen in the case notes. DW4 testified that under cross-examination he agreed that a case notes of a patient like exh. D6 is a very important document to reflect his involvement personally in a MDD forensic case, but in this case, the case notes exh. D6 shows that he was only involved once, ie, on 11 March 2008 at 4pm during the ward rounds which lasted for 20 minutes. DW4 conceded that for Major Depressive Disorder in a forensic case a psychiatrist needs to attend to the Major Depressive Disorder

patient personally to assist him to assess the symptoms and signs correctly. If indeed DW4 was involved personally in this case, surely it is documented in the case notes. In any event the case notes does not record whether DW4 did talk or interviewed the accused. So, in the absence of such record in the case notes it is presumed that DW4 was not involved personally in the examinations and assessments of the symptoms and signs of MDD on the accused.

[121] As DW4 was not involved personally in this case and that since he relied on Dr Syarifah and Dr Rosilawati to do the clinical assessments on the accused, his opinion that the accused was suffering from MDD is not of much value compared with the evidence of the doctors who had attended to the accused.

[122] In the case of *Public Prosecutor v. Kenneth Fook Mun Lee @ Omar Iskandar Lee Abdullah (No. 2)* [2003] 1 LNS 721; [2003] 3 MLJ 581 at p. 124, it was held that:

> … As *Sarkar on Evidence* 15th Edn. says at page 901, opinion of medical men based on hearing the evidence of other witnesses without observing facts is not of much value. Thus opinion of doctors based mostly on prescription an on their general knowledge of the course of a disease are always indirect evidence and not much of weight when compared with the evidence of doctors who personally attended the patient (*Hari Singh v. Lachmi* 59 IC 220; 12 PLR 1921).

[123] DW4 said in assessing the accused, they work as a team. This cannot be as in the case notes it does not show this. If indeed the discussions were ever held between DW4 and his treating team, it must be documented in the case notes which is a standard practice in the medicine field. In any event, the significance of the evidence of DW4 that he was involved personally in this case with his treating team can only be accepted if his evidence is supported by Dr Syarifah and/or Dr Rosliwati. By failing to call those doctors who documented the case notes to substantiate the evidence of DW4 has deprived himself of the best evidence that may have established his case.

[124] As the burden of proof to establish MDD is on a balance of probabilities which rests on the accused, the evidence must meet the required standard. Therefore, the evidence of DW4 that he was personally involved in interviewing or examining the accused clinically ought to be supported by Dr Syarifah and/or Dr

Rosliwati, otherwise his evidence will be of no value – (see *Public Prosecutor v. Kenneth Fook Mun Lee @ Omar Iskandar Lee Abdullah (No. 2)* [2003] 1 LNS 721; [2003] 3 MLJ 581 at p. 126). A

[125] Another serious flaw in the case notes exh. D6, there is no clear record that attempts were made to establish whether the symptoms of MDD on the accused were pervasive for at least two weeks prior to the killing. This is another part of the evidence of DW4 which needs to be considered with a pinch of salt. Five MDD symptoms must be pervasive for at least two weeks prior to the incident and obviously those symptoms were not documented in the case notes and yet DW4 was of the opinion that the accused was suffering from MDD. B C

[126] DW4 said the case notes were purely documented based on what the accused have had told the treating team and no efforts to investigate further the other data available from the social work report, police summary, the arresting party, the investigating officer of this case and the accused's girlfriend as well as the parents, in particular, the accused's mother as to the conducts of the accused before, during and immediately after the incident. To this end apparently, the opinion of DW4 as to the state of mind of the accused at that particular time were flawed and insufficient to support his findings that the accused was suffering from MDD. D E

[127] Based on the case notes the accused were diagnosed as suffering from "Malingering" and differential diagnosis, ie, drug induced substance and schizophrenia, and yet no attempts at all to establish those diagnosis which entail different symptoms. It is in evidence that the symptoms for drugs induced substance are different from that of MDD. Again the symptoms for schizophrenia consist of symptoms dissimilar to the symptoms of the other two conditions. The accused was also diagnosed with personality underlying disorder and no attempts to investigate this condition. In view of these anomalies, the accused could have had suffered from other mental condition of which DW4 and his treating team had failed to do. F G H

[128] DW4 was not a forthright witness. For example on whether MDD sufferer can suffer: I

Q : Do you agree with me that criterions for the underlying personality disorder are different from that of criterions for Major Depressive Disorder?

A : No, the two disorders can co-exist.

[129] Later in the same breath DW4 said this:

Q : Are you telling us that the criterions for Major Depressive Disorder can be used for underlying personality disorder?

A : No, for instant a person with the headache also can have a co-existing fever.

Q : Are the symptoms for Major Depressive Disorder the same symptom for underlying personality disorder?

A : No.

[130] Another example where DW4 was not coherent with his evidence is when he was cross-examined on the issue of voices after the accused taking the drugs, he said:

Q : Up to this stage did Dr. Sharifah found out from where the voices came from?

A : That she did not write.

Q : Is it not crucial to find out?

A : Ye it would have been better if she explained further from where the voices came from.

Q : This is crucial for the doctor to find out in the case where someone claims to be suffering from psychosis?

A : Yes.

Q : Is it not important also that the said doctor to ask the Accused from where he heard the voices and whether the voices were pervasive even without taking the drugs?

A : She did ask about hearing voices but did not mention the source.

Q : Do you agree with me that said doctor missed out very important fact that the Accused heard voices from his own mind or from outside?

A : It is not very important.

[131] There are a few instances where DW4 was not consistent in his evidence such:

Q : This is a forensic assessment, is it not material that the reasons of that opinion must be in the case notes?

A : The reasons are written there.

[132] And yet this event was not documented in the case notes, which are a crucial piece of medico-legal document. A

[133] In cross-examination, DW4 said Dr Syarifah asked about hearing voices but did not mention the source but during re-examination, he said he assumed that the voices were attributed to the accused's own exaggerated thoughts. This is another evidence DW4 which ought to be treated with caution. B

[134] DW4 even could not differentiate the terms between mental illness and mental disorder, and only after he was corrected by PW30 he realised that those terms were not the same terminology. It is not surprising that his evidence is incoherent and rumbles. C

[135] In view of these incidences, the evidence of DW4 is of no assistance to show that the accused was suffering from MDD at the material time. D

[136] As regards the evidence of the accused that he lost his memory and could not recall what transpired during the acts of stabbing the deceased, his evidence must be taken in the light of the evidence of PW16, PW19 (the arresting party), PW25 (the investigating officer), PW12 (the pathologist) and PW30 & DW4. E

[137] PW16 said after she came back from night jaunt at about 3am on the 3 February 2005 she described the acts and conducts of the accused, ie, the accused charged at her, she was pinned down by the accused upon entering the house, threatened by the accused, dragged to the room, asked to pack her personal belongings and taken out of the house and forced into the car before the accused locked the sliding door and the iron grill to the main entrance of the house and dropped her to a house in Tudan where she was subsequently tied to the bed frames, had sex with her and continuously threatening her until they left for Tusan, Bekenu in the early hours of 6 February 2005 until they were arrested by the police at about 4pm that day. PW19 said the accused was in the state of fear when he was arrested by the police. PW25 said the accused looked normal when he was referred to him for further investigation. PW12 said the deceased sustained 15 injuries on his body. There are also circumstantial evidence on the conducts of the accused when the alleged incident happened in that the body of the deceased was dragged from the sofa in the living room to the kitchen, the blood stains on the floor from the sofa to the door of the kitchen were wiped F G H I

away and attempts by the accused to wash the mops and the clothes which he had allegedly used to wipe away the blood stains.

[138] This court ruled that those conducts are consistent with the accused being in the state of consciousness and fully aware of his acts and that by wiping away the blood stains, the accused knew the nature of his acts, ie, to conceal the evidence. The conducts of the accused at that material time are consistent with the findings of PW30 that the accused was in full control of his acts and aware of what he was doing. In the circumstances, the accused was conscious of what he was doing.

[139] The accused was said to be suffering from personality underlying disorder and was malingering when he was admitted to the hospital for mental observations. As can be seen from the case notes, the accused was struggling to build up the symptoms for MDD. The treating team as can be inferred from the case notes was making incoherent attempts to find out the symptoms of MDD. And for reasons known only to DW4, despite insufficient data and that the case notes are a self-report, the accused was diagnosed as suffering from MDD which is against the elementary symptoms for MDD.

[140] This court found that the accused was not telling the truth and consistent with his underlying personality disorder gave incoherent, inconsistent and incredible evidence as to his state of mind at the time of the incident. The accused said in his evidence he took 20 tablets of "Eramin 5" between 7-8pm before he went to the deceased's house after waking up at his house. In the case notes, social work report and the psychiatric report, the accused said he took 5-6 tablets of "Eramin 5". In the police summary, the accused said he used bicycle to go to the house of the deceased at that material time whereas in his evidence he said he could not recall how he reached the deceased's house. In the police summary, he could detail out the events of the alleged stabbings except that he "tidak sedar" why he stabbed the deceased. But he could not remember the entire events in the house when he gave his evidence in court.

[141] The accused is a compulsive liar and as he could not produce any other defence to save his life, he has opted the worst scenario of the line of defence, ie, insanity, which if he is

successful to raise this defence, he would be acquitted from the offence charged and not long afterwards he will surely be a free man again through this legal insanity.

[142] Be as it may, in the circumstances, the evidence of the accused is therefore has to be treated with utmost scrutiny and suspicion.

[143] Be that as it may, this court is inclined to consider that the evidence of PW30 should be preferred when he said from the available materials and facts before him, he was of the opinion that the accused was not suffering from MDD. PW30 has correctly summed up his opinions about the conducts of the accused at the material time in the following manner:

> … the autopsy report said there were 15 injuries, 12 of which is stabbed wounds and 3 were cut wounds and of these injuries two were inflicted with considerable force. Out of the 15 injuries 13 were injuries inflicted to the front of the victim and 2 were to the back of the victim. My opinion is that these are injuries inflicted by somebody who was very angry and intended the injuries to cause serious harm to the victim. As to the state of mind, my opinion is that the accused knew what he was doing that means the accused was stabbing and intending to cause harm to the victim. Regarding self-control, I would like to say that the issue here is not the loss of control but the willingness or lack of to exert reasonable control. What I am saying is generally, we all grow up learning to exert control and we are expected to exert that control over our action. In this case it is not that the accused have lost control, but he is not willing to control himself. Ability to control can be affected by the Accused's emotions towards the victim. This can be his anger or hatred or as part of his personality or due to some mental disorders that the accused is suffering. So my opinion is that the accused was angry at the victim both because of past experiences with the victim as well as being discovered entering the house and being surprised of the victim's presence in the house when he entered the house. That would cause the accused to less able control his actions or his impulses. I do not know what Dr. Rajinder meant by the word of "frenzy". This term in psychiatry we normally do not use.

[144] PW30 further commented that the attending doctors must document their diagnosis or opinions in the case notes as required by the standard of care. He said that:

A Q : You have heard Dr. Rajinder said that discussions between the treating team did occur, whether it is recorded or not I put to you it is unsafe for you to say that there was sufficient data which the treating doctors did not rely on to come to their diagnosis or opinions, do you agree?

B A : I disagree because the standard of care requires that doctors document what they do. It is unsafe for doctors not to record what they have done or discussed. What I am merely saying is that there were not enough data that the doctors had documented to warrant a diagnosis to MDD. That C doesn't mean that the doctors did not document sufficient data which they could have relied on to come up with other diagnosis or alternative diagnosis. If you look at the case notes of the treating team diagnosis at the end of each sessions they have consistently recorded as "Malingering" and differential diagnosis of substance induced psychosis or D MDD. There was no documentation of how they have come to the final diagnosis of MDD or of how they have excluded the preferred diagnosis of "Malingering". In the doctor's practice the term impression after seeing the patient is the main diagnosis followed by differential diagnosis. In the E normal practice they would have to document sufficiently why they have finally come to the diagnosis of MDD. What I am saying is that diagnosis seems to suddenly appear. I am not saying that the accused is or is not suffering from MDD. I am basing my opinion solely on the case notes.

F **[145]** This court found the reasoned conclusions of PW30 on the state of the mind of the accused at the material time is therefore carries much weight and significance in that the accused was not suffering from MDD.

G **[146]** In the circumstances, the accused had failed to establish that he was undergoing a MDD episode at the material time on a balance of probabilities. The evidence of the defence medical expert, ie, DW4 is suspicious as he had premised his opinions on insufficient data and relied on the evidence of his treating team H without personally assessing the accused clinically and forensically, and was incoherent with his evidence. (*PP v. Kenneth Fook Mun Lee @ Omar Iskandar Lee Abdullah (No. 2)* [2003] 1 LNS 721; [2003] 3 MLJ 581).

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[147] In *PP v. Ang Soon Huat* [1990] 1 LNS 103; [1991] 1 MLJ 1, it was held that the judge is free to choose which evidence or testimony he prefers but he should give reasons as to why he preferred one expert's opinion rather than that of the other. And that is exactly what this court did in this case.

Intoxication

[148] Even if the accused pleaded that he was voluntary intoxicated at that material time, it is not a defence under s. 83(1) of the Penal Code.

[149] In the case of *Kamaruddin bin Omar v. PP* [1938] 1 LNS 32; [1938] MLJ 63, it was held that "intoxication" shall be deemed to include a state produced by narcotics and drugs.

[150] In *Public Prosecutor v. Kenneth Fook Mun Lee & Another Appeal* [2006] 1 CLJ 499; [2007] 1 MLJ 334, it was held that:

> … what is more pertinent is evidence of the state of mind of the respondent at the material time. In relation to this view, he said;
>
> > The best evidence to establish his state of mind is his conduct prior to, at the time of, and after the offence. I say this because what is in issue is that the effect of intoxication on the state of mind of the person in order to determine whether he could have formed the necessary intention. This is best reflected by his conduct and not the level of his intoxication.
>
> …
>
> A drunken man may form an intention to kill another, or to do grievous bodily harm to him, or he may not, but, if he did form that intention, although a drunken intention, he is just as much guilty of murder as if he had been sober.
>
> A drunken man is presumed to have the capacity to form the specific intent to constitute the crime, unless evidence is given from which it can reasonably be informed that he was incapable of forming it …

[151] In our present case, assuming that the accused was intoxicated, it is incumbent upon this court to look at the accused's conducts prior to, at the time of, and after the offence whether he was capable of forming the specific intent necessary to constitute the crime. The intention on the part of the accused

to form the specific intent to cause bodily harm to the deceased can be inferred from the nature of the injuries sustained and the type of weapon used to inflict those injuries. Here, the deceased sustained 15 injuries on her body with the flick knife, thus it is clear that the accused had the necessary intention to commit the crime.

"Intention"

[152] On this issue, this has been discussed earlier on, and to emphasize herein that the evidence of PW30 has strengthened the evidence of PW12, PW13, PW16, PW20, PW21, PW25 & PW26 that the accused had the intention to kill the deceased.

Conclusion And Sentence

[153] This court has re-evaluated the evidence of the prosecution in the light of the defence evidence and made the above findings.

[154] In view of the foregoing reasons, the accused has failed to raise a reasonable doubt on the prosecution's case on a balance of probabilities, and accordingly this court found that the prosecution has established the offence charged beyond a reasonable doubt.

[155] This court thus found the accused guilty as charged.

[156] After hearing the mitigations by the accused this court convicted the accused for the offence charged and handed down the mandatory death sentence on the accused.